

C44dcarl

Trial

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 ARTURO CARAVANTES and
4 FRANCISCO SOTARRIBA,

5 Plaintiffs

6 v.

09 Civ. 7821 (RPP)

7 53RD STREET PARTNERS, LLC
8 d/b/a REMI RESTAURANT and
9 OSCAR VELANDIA,

10 Defendants

-----x

11 New York, N.Y.
12 April 4 2012
13 9:40 a.m.

14 Before:

15 HON. ROBERT P. PATTERSON, JR.,

16 District Judge

17 APPEARANCES

18 PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP

19 Attorneys for Plaintiffs

20 1285 Avenue of the Americas

21 New York, NY 10019

22 BY: AARON S. DELANEY

23 MAYUR P. SAXENA

24 MOIRA KIM PENZA

25 URBAN JUSTICE CENTER

Attorney for Plaintiffs

123 William Street 16th Floor

New York, NY 10038

BY: NICOLE HALLETT

EPSTEIN BECKER & GREEN PC

Attorneys for Defendants

BY: KERRY M. PARKER

ALKIDA KACANI

- also present -

JOHN MATT, LILIANA HALAC - Spanish Interpreters

RANDALL CARTER - Plaintiff AV Tech

C44dcarl

Trial

1 (Trial resumed)

2 THE COURT: Please be seated.

3 Mr. Velandia, you are reminded you are still under
4 oath.

5 That is a requirement that the Court give you that
6 admonition whenever you take the stand on another day.

7 OSCAR VELANDIA,

8 Resumed, and testified further (through the Interpreter),
9 as follows:

10 DIRECT EXAMINATION (Resumed through the Interpreter)

11 BY MR. PARKER:

12 Q. Mr. Velandia, yesterday you testified about various types
13 of touching by Remi employees, and I want to continue with that
14 line of questioning.

15 THE INTERPRETER: There were just a couple of words I
16 could not hear.

17 MR. PARKER: I said that yesterday Mr. Velandia began
18 to testify about various types of touching engaged in by Remi
19 employees, and I want to continue with that line of
20 questioning.

21 A. OK.

22 Q. You referred yesterday to this touching of buttocks and
23 genitals as a game or playing around. Who participated in
24 those activities?

25 A. Well, when I started working at Remi's, I noticed that most

C44dcarl

Velandia - direct

1 of the employees participated in that type of activity.

2 Q. When you started working at Remi, was Mr. Caravantes
3 employed there?

4 A. Yes. I have understood that he had already been working
5 there.

6 Q. And when you started working at Remi, was Mr. Sotarriba
7 working there?

8 A. No. He started afterwards.

9 Q. Did Mr. Caravantes participate in this touching of other
10 employees?

11 MR. DELANEY: Objection. Foundation.

12 THE COURT: Objection sustained.

13 Q. After you began working at Remi, you said you had occasion
14 to observe other employees engage in touching of one another's
15 buttocks and genitals, correct?

16 A. Yes, correct.

17 Q. And you began when at Remi?

18 A. In '97.

19 Q. After you began working at Remi and began observing other
20 employees engaged in this touching game, as you called it, did
21 you ever see Caravantes engaged in touching other employees?

22 A. Yes, I saw him.

23 Q. What types of touching did you see Mr. Caravantes engage in
24 at Remi?

25 A. Well, I noticed that -- well, he was engaged in doing the

C44dcarl

Velandia - direct

1 same activity with other -- playing with other coworkers, like
2 slapping or tapping in the back, and they would touch each
3 other's behind.

4 Q. Touch each other's what?

5 THE INTERPRETER: Behind.

6 MR. PARKER: Buttocks?

7 THE INTERPRETER: Buttocks.

8 A. Yes, and also genitals.

9 Q. When did that take place?

10 A. Well, ever since I started working there, I started
11 noticing, as you would call it here, horseplaying among
12 themselves.

13 Q. But during that timeframe, after you began working at Remi
14 in 1997, was there ever a time when Mr. Caravantes touched you
15 anywhere?

16 MR. DELANEY: Objection. Leading.

17 THE COURT: I will allow the question.

18 A. Yes. Mr. Parker, there was a moment in which he started
19 touching me.

20 Q. Do you recall when that began?

21 A. No, not exactly. I don't recall.

22 Q. Can you place it in terms of time as to whether it was
23 before or after the management changed and ownership changed in
24 2005?

25 A. Well, that type of joking started before the administration

C44dcarl

Velandia - direct

1 changed.

2 Q. When you say that type of joking, you are referring now to
3 the genital/buttocks touching?

4 MR. DELANEY: Objection. Leading.

5 THE COURT: Objection sustained to the form of the
6 question.

7 Q. When you use the word "joking," what are you referring to?

8 A. I was referring to the type of behavior -- well, you know,
9 not the regular type of behavior that you see people doing.

10 THE COURT: What kind of behavior were you talking
11 about?

12 THE WITNESS: Your Honor, I'm referring to the
13 behavior of engaging in touching and joking around touching
14 each other's genitals and behinds, which is something that I
15 was not used to observe in my culture before.

16 THE COURT: Touching the clothes, or is that touching
17 the bare buttocks?

18 THE WITNESS: No, your Honor. I'm referring to --
19 this is a type of joking which somebody tells a joke or plays
20 around and they touch each other on clothes quickly.

21 THE COURT: On the clothes?

22 THE WITNESS: Yes, on the clothes.

23 MR. PARKER: Your Honor, may I proceed?

24 THE COURT: Yes, you may.

25 BY MR. PARKER:

C44dcarl

Velandia - direct

1 Q. You mentioned in your response that --

2 THE COURT: Well, let me ask one more question.

3 Are you talking about goosing? Do you know what
4 "goosing" is?

5 THE WITNESS: I don't know what it is, your Honor.

6 THE COURT: What?

7 THE WITNESS: What's this? Your Honor, I don't know
8 the word "goosing."

9 THE COURT: OK.

10 BY MR. PARKER:

11 Q. Describe further, if you would, what you meant when you
12 said touching buttocks and genitals over the clothing quickly.
13 What did you mean by "quickly"?

14 A. One of the examples of that situation is as follows: For
15 example, someone who is already at work, somebody else comes in
16 afterwards. Then one of them says, "Hola, mami," or hello,
17 babe, and then touches that person's buttocks. But it's
18 something rather quick, a tap or touch, like this.

19 And the objective there is, how they talk to each
20 other like that, is just speaking to them as if you're talking
21 to a female just so that the other one would feel less macho.

22 Q. What types of words were used when this occurred?

23 MR. DELANEY: Objection. Foundation.

24 THE COURT: Objection sustained.

25 Q. In your response you mentioned that there would be jokes

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Velandia - direct

1 made. What types of jokes were made at the time that these
2 touchings occurred?

3 MR. DELANEY: I am still going to object to the
4 foundation.

5 THE COURT: I will allow the question.

6 A. Well, Mr. Parker, there are many things that are said to
7 many, because, in fact, the language they used is very obscene.
8 Any type of obscenity that will come out to mind, that's the
9 first thing that will come out.

10 THE COURT: When people touch the buttocks, is it a
11 caress or is it meant -- was it intended to shock?

12 THE WITNESS: No, your Honor. I don't think it is a
13 caress. It's like a quick tap but light.

14 BY MR. PARKER:

15 Q. Did you participate in what you have just described as the
16 type of touching that occurred at Remi?

17 A. Yes. At one point -- I started doing that once, I started
18 getting familiar with them, I started doing it, too.

19 Q. About when did you start?

20 A. I really don't have a specific time to tell you because it
21 is something that starts becoming more and more as you get more
22 familiar with people.

23 Q. And after you began engaging in this touching game, as
24 you've described, how long did this continue?

25 A. Mr. Parker, always. It hasn't stopped.

C44dcarl

Velandia - direct

1 Q. And would you describe, please, the nature of the touching
2 that Mr. Caravantes did to you.

3 A. Well, I feel that it was -- at the beginning it was
4 something like everybody else, it was something inoffensive.

5 THE COURT: When these incidents occurred, who was the
6 first person to touch the other person, you or Mr. Caravantes?

7 THE WITNESS: Well, your Honor, I think that he was
8 the one who started touching me first because before that I was
9 not accustomed to doing -- touching people. So I would say
10 that he started touching me first.

11 THE COURT: All right.

12 BY MR. PARKER:

13 Q. At any time after -- well, let me clarify it.

14 Did you also -- were there occasions where you touched
15 Caravantes in the same way?

16 A. Yes. The same manner because once we became familiar with
17 each other, then we started joking around like that.

18 Q. Did Caravantes ever ask you to stop?

19 A. No, because this was just playing, and everybody noticed,
20 everybody knew, and so he never said for me to stop.

21 Q. Did the nature of the touching between you and Caravantes
22 ever change from what you've described?

23 A. Yes. At one point I thought that it was something
24 different; it changed.

25 Q. When was that?

C44dcarl

Velandia - direct

1 A. That was approximately around 2005.

2 Q. Please describe what happened.

3 A. On one occasion I felt one advancement in which I thought
4 to myself, well, this is no longer part of the joking around.

5 Q. Mr. Velandia, what is your sexual orientation?

6 A. I consider myself a gay man.

7 Q. You just said that there was one occasion where you felt it
8 was different. Describe what happened and why it was
9 different.

10 A. OK. As I said before, as we used to play around not only
11 with Mr. Caravantes but with other employees as well, and on
12 one occasion there was a party going on in the Rialto Room and
13 the party host was speaking. Then all employees stopped
14 working.

15 The employees who were working with me stayed inside
16 the room. And at the moment the host started speaking, I was
17 outside the Rialto's door.

18 Q. OK. Let me stop you there. The Rialto's door, what do you
19 mean by that?

20 A. Well, the Rialto has two doors. One is on 54th Street,
21 which is the main entrance. And there are two doors which open
22 and close, which are the doors that separate the Rialto Room
23 from where it leads to the coffee station.

24 Q. OK. Now, could you take the binder for defendants' trial
25 exhibits. Could you open up to Tab No. 61.

C44dcarl

Velandia - direct

1 Do you see that photograph?

2 A. Yes, sir.

3 Q. Do you recognize what is shown in that photograph?

4 A. Yes, I recognize everything that's in the picture.

5 THE COURT: I don't have the exhibit.

6 (Pause)

7 Q. What does this photograph show, Mr. Velandia?

8 A. Well, this picture was taken from the door that connects
9 from the Grand Canal towards a hallway to the coffee station.
10 So from where the photographer is, if you make a left, it will
11 lead you to the kitchen. And if you keep walking and you see
12 that first man dressed in black, if you make a right right
13 there, there is an emergency exit. Two steps forward is the
14 coffee machine, to the left.

15 THE COURT: Two steps forward from where?

16 THE WITNESS: Two steps past where the gentleman in
17 black is, to the left is the coffee machine.

18 BY MR. PARKER:

19 Q. Are you saying the coffee machine is located between the
20 two men who are standing in the photograph?

21 A. Exactly, yes.

22 Q. Now, do you see the man who is standing with his back to
23 the camera holding a briefcase? There is a circular -- it
24 looks like a window in the back. What is that?

25 A. Yes. That's the door I was talking about which separates

C44dcarl

Velandia - direct

1 the Rialto Room from the coffee station.

2 Q. And if you turn to Tab 60, do you recognize -- that is Tab
3 D-60, your Honor.

4 THE COURT: I've got it.

5 Q. Do you recognize what is shown in that photograph?

6 A. Yes, sir. That's the coffee station.

7 MR. PARKER: Your Honor, I move the admission of
8 Defendants' 60 and 61 into evidence.

9 MR. DELANEY: No objection.

10 THE COURT: Defendants' Exhibits 60 and 61 are
11 admitted in evidence.

12 (Defendants' Exhibits 60 and 61 received in evidence)

13 BY MR. PARKER:

14 Q. Mr. Velandia, please turn back to Tab 61.

15 OK. Now, you testified earlier, when you were shown
16 the photographs, that you were standing outside the doors to
17 the Rialto Room. Does this photograph show where you were
18 standing --

19 THE COURT: I'm not sure that that is accurate.

20 MR. PARKER: OK. I'll cover that again, Judge.

21 Q. You started to describe this other situation with
22 Mr. Caravantes. Where were you at the time that this event
23 occurred?

24 A. As I was explaining before, I was outside the Rialto Room.
25 I was standing exactly out the door that you see in the back.

C44dcarl

Velandia - direct

1 And I was looking out the circular window which you see on the
2 door.

3 Q. What were you looking at?

4 A. I was looking towards the inside -- looking for a clue to
5 see when the host would stop talking and we can start with the
6 service.

7 Q. What happened next?

8 A. While I was standing there, that's when I noticed for the
9 first time that Caravantes wanted to advance, to go beyond the
10 kind of joke that we were used to. That day I was looking
11 through the window and Mr. Caravantes came from behind me as I
12 was looking through the window, and I felt his contact from
13 behind me. But I thought he was joking, as usual. And I
14 noticed that it was not joking as usual because he was
15 experiencing an erection, and I was able to feel it. I noticed
16 it because while I was standing and he was touching me from
17 behind, I could feel that he was -- he had an erection.

18 Q. He was touching you how? Describe that.

19 A. No. All he did was he touched me with his genitals from
20 behind.

21 Q. Touched you where?

22 A. In my buttocks.

23 Q. What happened next?

24 A. Well, what happened? I myself was surprised because I
25 never saw Mr. Caravantes as a gay man or as a bisexual man,

C44dcarl

Velandia - direct

1 and the fact that he had an erection allowed me to think
2 something else. However, they joke very heavily. Then what I
3 did was I took my hand and I felt it backwards and I felt,
4 because I was trying to find out whether it was really an
5 erection he had or that he was touching me with something else,
6 and then that's when I was able to realize that he had nothing
7 else in there but it was his member, which was erect.

8 Q. When you did that, when you felt that, did you feel it on
9 the outside of the clothing or inside the clothing?

10 A. No. It was inside the clothes.

11 Q. Your hand went inside the clothing or stayed on the
12 outside?

13 THE INTERPRETER: The witness is answering directly
14 from English and bypassing the interpreter and making it --
15 your Honor, would you be so kind as to direct the witness to
16 wait for the interpretation, because he is confusing the
17 interpreter and correcting the interpreter at the same time
18 without allowing the interpreter to interpret.

19 Please, read this again.

20 MR. PARKER: Your Honor, may I have that question read
21 back?

22 THE COURT: Yes, you may.

23 "Question: Your hand went inside the clothing or
24 stayed on the outside?"

25 THE WITNESS: No, I touched him outside the clothes.

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Velandia - direct

1 THE COURT: What was outside the clothes, your hand or
2 his member?

3 THE WITNESS: No. My hand.

4 THE COURT: And you touched his clothes, not his
5 member?

6 THE WITNESS: Yes, your Honor.

7 BY MR. PARKER:

8 Q. What happened after that?

9 A. No. That day absolutely nothing else happened.

10 Q. Did there -- what did you conclude as a result of that
11 event?

12 A. The day was too soon for me to have any conclusion. It was
13 something that happened, and I was wondering myself why did
14 that happen because he -- I didn't know that he liked doing
15 that.

16 Q. After that occasion, was there ever another time where you
17 and Caravantes touched one another?

18 A. Yes. There were other occasions.

19 THE COURT: About what date was this occurrence that
20 you recounted at the door of the Rialto Room?

21 THE WITNESS: Your Honor, I don't have in my mind the
22 exact date because it was something that happened while I --

23 THE COURT: OK. How long before the new ownership
24 took over did this happen, approximately?

25 THE WITNESS: No, your Honor. This occurred after the

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Velandia - direct

1 new owners arrived.

2 THE COURT: How long, approximately, after the new
3 owners arrived?

4 THE WITNESS: No. It was recently. It was shortly
5 after he started this, because I remember the Maitre d' Luigi
6 Martini was the one managing the parties.

7 Q. Do you recall how long Luigi Martini worked for under the
8 new ownership at Remi?

9 A. I think Mr. Luigi Martini worked with the new management
10 for seven or eight months. I'm not sure.

11 Q. Did there come a time when there were any other instances
12 after that occurred where you and Caravantes had any type of
13 exchange other than the type of touching that you had been
14 describing?

15 A. Yes. One week after I was at my workstation -- I'm sorry,
16 it was a few weeks later. As I was working at my station, and
17 Caravantes came over and asked me, come to the coffee station.
18 And when I came to the coffee station, he was standing in front
19 of the coffee machine and he was holding in his hand a big
20 gallon of milk. But the gallon was empty. He had the gallon
21 in front of his genitals.

22 And when I got to face him face-to-face, he put away
23 the gallon, and I was able to see that he had an erection and
24 he had his penis outside his pants.

25 Q. What happened after that?

C44dcarl

Velandia - direct

1 A. Well, at that moment I understood that Mr. Caravantes
2 wanted to have a sexual relation with me or wanted to incite me
3 to have a sexual relation with him. And then that day I felt
4 my heart beating wildly because it was a situation I did not
5 expect. And that day all I did is I touched him in his skin,
6 and I went back to my room in the Grand Canal.

7 THE COURT: Where is your room at the Grand Canal?

8 THE WITNESS: It's the main room, Grand Canal. That's
9 where I was working as a waiter that day, in the Grand Canal
10 Room.

11 Q. Were there any words spoken by either of you following
12 Mr. Caravantes' exposure of his penis to you?

13 A. No. Mr. Parker, there were no words. We just looked at
14 each other face-to-face and there were no words exchanged.

15 Q. After that incident occurred, was there ever any
16 conversation between the two of you about that event?

17 A. No. Mr. Parker, it's because there was -- on my part, I
18 wasn't looking for any of that. And on the other side, I was
19 shocked myself because I did not expect that behavior from
20 Mr. Caravantes. And then I simply allowed him to proceed with
21 his advances and I didn't see the need to ask anything.

22 Q. At any time --

23 THE COURT: What do you mean, "after that"? Are you
24 talking about during that day?

25 THE WITNESS: No, your Honor. That day we didn't talk

C44dcarl

Velandia - direct

1 about it nor any other day did we talk about what had happened.

2 BY MR. PARKER:

3 Q. At any time after that day when that event occurred in the
4 coffee station, were there any other events that led you to
5 conclude that Caravantes was interested in a relationship?

6 MR. DELANEY: Objection. Leading.

7 THE COURT: Objection sustained to the leading.

8 Q. What happened after that event occurred between you and
9 Caravantes on that day?

10 A. After that, about a few weeks later, as I was closing at
11 night and I was already wrapping up to bring the reports
12 downstairs, Caravantes approached and touched me from behind
13 and whispered in my ear, "I'll wait for you at the coat check."

14 Then I finished. I did the reports, and I took the
15 things downstairs.

16 And then once I went upstairs, the bartender, the
17 waiter who closes and the busboys and the food runners had left
18 already, and I closed the door but from the inside. And I went
19 to the coat check. And Mr. Caravantes was there.

20 And he had brought a chair inside the coat check, and
21 he was sitting on the chair and he had his pants open with his
22 genitals outside.

23 Q. What happened next?

24 A. And then that day we did have a sexual encounter of another
25 nature. That day I performed fellation to Mr. Caravantes.

C44dcarl

Velandia - direct

1 Q. Mr. Velandia, have you ever attempted to establish a sexual
2 relationship with a man whom you believed was heterosexual?

3 A. No. Mr. Parker, I think that would be something that made
4 no sense.

5 Q. Why?

6 A. Because I don't see why I would approach a man with a
7 sexual inclination -- a man who is a heterosexual when I know
8 that he will not have any desire for me.

9 THE COURT: Did you get pleasure from performing
10 fellatio on Mr. Caravantes?

11 THE WITNESS: Yes, your Honor.

12 BY MR. PARKER:

13 Q. At that time of that event did Mr. Caravantes ejaculate?

14 A. Yes.

15 Q. Did he ask you to stop?

16 A. No. At no time, no. That would have been even more
17 strange to me because if he hadn't provoked the situation, it
18 wouldn't have taken place.

19 Q. Were there any times thereafter, after this occasion where
20 you performed oral sex on him, that this repeated itself?

21 A. Yes, Mr. Parker. After that time, then I waited for him to
22 let me know that he wanted it to take place again, because I
23 thought that perhaps all he wanted to do is satisfy a
24 curiosity. I wanted to wait for him to be the one to make the
25 advances, because I figured that if he was the one starting,

C44dcarl

Velandia - direct

1 then he would stop as well.

2 Q. And what happened after that?

3 A. Then after that I noticed that he didn't stop. Then I
4 realized that he was not satisfying his curiosity --

5 MR. DELANEY: Objection to the -- sorry. Motion to
6 strike, your Honor. He is speculating on Mr. Caravantes'
7 mental state.

8 MR. PARKER: I think he is just describing his
9 behavior, Judge.

10 MR. DELANEY: That is not what he said. He said his
11 curiosity not being satisfied, your Honor.

12 THE COURT: It goes to the witness' state of mind, not
13 Mr. Caravantes' state of mind. I will allow the question.

14 You can answer it.

15 A. And then because he didn't stop, then I allowed for these
16 occurrences to continue.

17 THE COURT: When was this incident in the coat room?

18 THE WITNESS: Your Honor, each one of them that occurs
19 started happening in a slow manner, so perhaps between each
20 occurrence or episode a couple of weeks would go by.

21 As I said before, I have always known that I'm gay.
22 And I recall I felt that way ever since I was six years old.
23 And then I knew that these things that happened with
24 Mr. Caravantes is things that he provoked because I know my
25 sexual taste. And so each thing happened in weeks from one

C44dcarl

Velandia - direct

1 another.

2 BY MR. PARKER:

3 Q. Mr. Velandia, have you told third parties that you were gay
4 before testifying here today?

5 A. Mr. Parker, I have never hidden my sexual identity. All my
6 friends have always known that I'm gay.

7 THE COURT: Did you tell anyone at work that you were
8 gay at Remi? Did you tell anyone at Remi that you were gay?

9 THE WITNESS: Yes, your Honor. Everybody knew.

10 THE COURT: Who? Did you tell the management that you
11 were gay?

12 THE WITNESS: Well, when I first started working, it's
13 not a situation which you go and say, "Hey, hello. I'm gay."
14 But as time goes along and you're sharing with people, they ask
15 you whether you have a girlfriend or not. That's when they ask
16 do you have a girlfriend. I say, No, I don't have a
17 girlfriend. I'm in a couple and he's a man, as well.

18 And that's the way in which I have let all my friends
19 know, and that's also the management, they know that I'm gay as
20 well.

21 THE COURT: Who did you tell in management?

22 THE WITNESS: Well, from the management, I didn't tell
23 anybody particularly because with management we don't socialize
24 much. But the managers know because the employees know, and so
25 they get to know who's who at the restaurant.

C44dcarl

Velandia - direct

1 THE COURT: Who did you tell among the employees that
2 you were gay?

3 THE WITNESS: Well, I recall the first one I told that
4 I was gay was a waiter who worked there, but he left around
5 '98.

6 (Continued on next page)
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Velandia - direct

1 THE COURT: Who else?

2 THE WITNESS: And then after I told the waiter, he
3 would tell my other friends, and the other busboys and the foot
4 runners.

5 THE COURT: Who did you tell?

6 THE WITNESS: Well, your Honor, I know I told some of
7 the busboys and some of the runners, but after -- but then I
8 don't recall the names of the persons because I told them I
9 want -- I've been working at the restaurant for 14 years, so
10 those are things that took place 14 years ago.

11 THE COURT: But new employees come on. Did you tell
12 any of the new employees? Who did you tell?

13 THE WITNESS: Yes, your Honor, when there are new
14 employees and we're talking, then if we're talking about
15 whatever, then I do tell them that I do live with Luis.

16 THE COURT: Who did you tell that to?

17 THE WITNESS: Recently?

18 THE COURT: It doesn't matter.

19 THE WITNESS: For example, I told Stacy Crow, I told
20 Eric Ishanov, Michelle Russo, Felipe Mioli, one of the busboys
21 named Miguel Cruz.

22 THE COURT: OK.

23 BY MR. PARKER:

24 Q. Before any of these events that you described with
25 Caravantes occurred, do you believe he was aware you were gay?

C44kcar2

Velandia - direct

1 A. Yes, because we had been working in the restaurant for a
2 while already, and I had been dating people -- going out with
3 people of my orientation as well. So they commented, oh,
4 they're gay and they go to gay bars.

5 THE COURT: Did Mr. Caravantes go to the gay bars with
6 you?

7 THE WITNESS: No, Mr. Caravantes never went. Other
8 friends who used to work at the restaurant with us, they're
9 heterosexual, they used to go sometimes but not Mr. Caravantes.

10 THE COURT: So he wouldn't know you actually went to
11 the gay bar, right?

12 THE WITNESS: No, he would only know because the
13 following day, then we would tell about where we had been to
14 and who we went with. That's how he would find out.

15 THE COURT: But you don't know what he heard the
16 following day, do you?

17 THE WITNESS: Well, but I would -- I would know that
18 he knew because then everybody else would just make comments
19 the following day and then they would just joking around, even
20 with the heterosexual guys, the guys would just go and said,
21 oh, I heard you went to the gay bar with -- Caravantes used to
22 say that to the gay -- to the straight guys.

23 THE COURT: And you heard it?

24 THE WITNESS: Yes, your Honor.

25 Q. After the first time that you and Caravantes had oral sex,

C44kcar2

Velandia - direct

1 were there times, any other times, thereafter when you had oral
2 sex together?

3 A. Yes, sir.

4 Q. How many times? About how many times, exactly if you know,
5 and, if not, approximately how many times?

6 A. Yes, Mr. Parker, but I don't know exact -- the amount of
7 times because I don't think anybody counts the times that they
8 have sexual intercourse. I would dare say it was ten times or
9 perhaps even more than ten times, if we take -- I took
10 consideration fellation and anal sex.

11 Q. Let's just talk about the oral sex. Where did these acts
12 occur?

13 A. Those acts occurred usually at the coat check of the
14 restaurant because this would always happen when everybody else
15 had left the restaurant.

16 Q. Other than the coat check, was there any other occasion
17 when you performed oral sex on Caravantes anywhere else in the
18 restaurant?

19 A. Yes. It once occurred at the Rialto Room because there was
20 no party, and I think it also once occurred at the coffee
21 station once everybody else had left.

22 Q. Did you ever have a sexual encounter, either oral or anal
23 sex, with Mr. Caravantes in anywhere other than on the premises
24 of Remi Restaurant?

25 A. No, not anywhere else besides the restaurant, just at the

C44kcar2

Velandia - direct

1 restaurant.

2 Q. Do you recall specifically any of the other occasions on
3 which you and Caravantes engaged in oral sex?

4 A. Specifically any other location? No, but I recall the
5 first occasions because it was something that caused an impact
6 in my mind. But then afterwards, it was just something
7 repetitive; even though it may sound strange, it was something
8 natural.

9 Q. On these other occasions where you'd had oral sex, did
10 Mr. Caravantes ever perform oral sex on you?

11 A. No, none.

12 Q. Who initiated the oral sex encounters?

13 A. Mr. Caravantes.

14 Q. Did you ever initiate any of them?

15 A. Yes, perhaps after it became usual, then I may have
16 insinuated to him so that we would do it.

17 Q. Describe these other occasions where you had oral sex
18 together with Caravantes. What led up to them?

19 A. Like I said before, usually he and I never exchanged a
20 complete conversation regarding this. I feel this was
21 something completely sexual which was taking place. If
22 Mr. Caravantes wanted to initiate it, he would come and touch
23 me and tell me that he would wait for me at the coat check. Or
24 if I was going to initiate it, I would ask him, do you want me
25 to stay? But those were the only verbal exchanges between him

C44kcar2

Velandia - direct

1 and I.

2 Q. When you say you would ask him if he wanted you to stay,
3 what do you mean by that?

4 A. Because when I would ask him, he knew that I was referring
5 to, whether he wanted to do something with me that day.

6 MR. DELANEY: Objection, your Honor; again he's
7 talking about Mr. Caravantes' state of mind.

8 THE COURT: The objection is sustained as far as it's
9 asking for Mr. Caravantes' state of mind.

10 MR. PARKER: It was probably a bad question, Judge.
11 Let me try a different one.

12 BY MR. PARKER:

13 Q. You said that you on occasion asked Caravantes if he wanted
14 you to stay. Stay where?

15 A. It was for me to stay at the restaurant. I know that it's
16 not something that's clear, but it was clear to us; we already
17 knew what was going on.

18 If I would ask Mr. Caravantes, you want me to stay,
19 there was no other reason why I would stay. So, between him
20 and I, we knew what it was, and so it's like if he came over
21 and he touched me, then I knew what he wanted.

22 THE COURT: He touched you where?

23 THE WITNESS: Your Honor, on my behind.

24 BY MR. PARKER:

25 Q. On the occasions where you performed oral sex on

C44kcar2

Velandia - direct

1 Mr. Caravantes, did he ejaculate?

2 A. Yes.

3 Q. Was there ever a time when he did not ejaculate?

4 A. No.

5 Q. What was his demeanor? Describe his demeanor during these
6 events, please.

7 A. His demeanor is a demeanor of any person who's having
8 sexual intercourse. He was relaxed and he was enjoying the
9 situation. That's how his demeanor was.

10 Q. On any of the times that you, as you testified, asked
11 Caravantes if he wanted you to stay, did he ever say no?

12 MR. DELANEY: Objection, your Honor; it's leading.

13 THE COURT: I'll allow the question.

14 THE WITNESS: Yes, Mr. Parker. On some occasion,
15 obviously he said like he had something else to do, so he would
16 decline. And by the same token, when sometimes he wanted to
17 have an encounter with me, I would also decline.

18 Q. Did there ever come a time when Caravantes told you that he
19 no longer wanted to have oral sex with you?

20 A. No, that never happened.

21 Q. You mentioned in your earlier testimony anal sex. Did you
22 and Caravantes ever have anal intercourse?

23 A. Yes.

24 Q. About how many times?

25 A. The same; I think it could have been a little bit more than

C44kcar2

Velandia - direct

1 ten times.

2 Q. Was the first time that you had anal intercourse with
3 Caravantes before or after the first time that you performed
4 oral sex on him?

5 A. That was after. It was something also which took place,
6 and I couldn't tell you exactly when, I couldn't recall, but
7 something that happened with the passage of time.

8 Q. Do you have a recollection of any conversation --

9 MR. PARKER: Let me rephrase.

10 Q. Do you have a recollection of the first time that you and
11 Caravantes had anal intercourse?

12 MR. DELANEY: Asked and answered.

13 THE COURT: Objection overruled.

14 Q. I'm just asking if you have a recollection of that event.

15 A. It's like I said before, we never really exchanged many
16 words, but in the same manner, this time he asked me -- I knew
17 that he wanted to have anal sex when he asked me if I had a
18 condom.

19 Q. Why --

20 THE COURT: Can you remember when and where you first
21 had anal sex with Mr. Caravantes?

22 A. When and where --

23 THE COURT: I'll change the question. Do you remember
24 when -- can you remember where you first had oral sex with
25 Mr. Caravantes?

C44kcar2

Velandia - direct

1 THE INTERPRETER: Can you please read that back to me?

2 MR. PARKER: Did you mean anal sex, your Honor?

3 THE COURT: I'm sorry, anal sex.

4 THE INTERPRETER: Please read that back to me.

5 (Record read)

6 THE COURT: I'm sorry, withdraw the question. Can you
7 remember when you first had anal sex with Mr. Caravantes?

8 THE WITNESS: No, I don't recall where the first time
9 occurred.

10 THE COURT: I said where.

11 THE WITNESS: Where? At the coat check.

12 THE COURT: And how long was that after you first had
13 oral sex with Mr. Caravantes?

14 THE WITNESS: Could have been like weeks later.

15 Q. You testified --

16 THE COURT: Can you tell us how it came about that you
17 had anal sex with Mr. Caravantes the first time in the
18 coatroom?

19 THE WITNESS: Yes, your Honor. As I said before, I
20 allowed this to happen the way he wanted them to happen. One
21 day, I stayed at the restaurant, we had already closed the
22 door, then we went to the coat check room, and that's where it
23 occurred, anal sex as well as fellation.

24 THE COURT: What actions did you take to cause anal
25 sex to occur?

C44kcar2

Velandia - direct

1 THE WITNESS: Mr. Caravantes asked me whether I had a
2 condom and whether I wanted to have anal sex, and I said yes.

3 THE COURT: And what actions -- what happened next?

4 THE WITNESS: Then, your Honor, the following thing is
5 that he put on the condom, then I stood against the wall, and
6 he penetrated me.

7 THE COURT: Were you facing the wall or facing the
8 room when you stood against the wall?

9 THE WITNESS: No, I was facing the wall.

10 THE COURT: Were you standing up or sitting down?

11 THE WITNESS: No, I was standing up.

12 THE COURT: And then what happened?

13 THE WITNESS: Well, then he proceeded to perform anal
14 sex until he reached climax, and that was the end.

15 THE COURT: Do you find that pleasurable?

16 THE WITNESS: Yes, sir.

17 BY MR. PARKER:

18 Q. What was Mr. Caravantes' demeanor during this act, and
19 afterwards?

20 A. Well, the encounters that we had, while we were having
21 them, he was relaxed and he was enjoying what we were doing.

22 THE COURT: How can you be relaxed and ejaculate?

23 THE WITNESS: No, your Honor, when I said relaxed, I
24 really mean that he was enjoying it. Perhaps it is the way we
25 say it in Spanish.

C44kcar2

Velandia - direct

1 THE COURT: How do you say it in Spanish?

2 THE WITNESS: Relajado.

3 THE INTERPRETER: It's pretty much like relaxed.

4 THE COURT: How do you spell that word?

5 THE WITNESS: R-e-l-a-j-a-d-o.

6 BY MR. PARKER:

7 Q. Mr. Velandia, you said you had ten or more anal sex
8 experiences with Mr. Caravantes. Where did they take place
9 after the first time?

10 A. Most of the times, it took place at the coat check room in
11 the restaurant, and once at the Rialto Room.

12 Q. On any of those occasions, did you penetrate
13 Mr. Caravantes?

14 A. No, never.

15 THE COURT: Was it always standing up?

16 THE WITNESS: No, your Honor, it was not always
17 standing up.

18 THE COURT: What other positions?

19 THE WITNESS: Sometimes I was on the floor -- how do
20 you say it -- kneeling down, and leaning forward, and other
21 times Caravantes was laying on the floor. And that's it.

22 BY MR. PARKER:

23 Q. Were condoms used each time?

24 A. Always.

25 Q. Who supplied them?

C44kcar2

Velandia - direct

1 A. I had them; I used to buy them.

2 Q. Who put them on each time?

3 A. He used to put them on.

4 Q. Put them on himself?

5 A. Yes.

6 Q. Did Mr. Caravantes ever physically resist having anal
7 intercourse with you?

8 A. No, never.

9 Q. Did he ever physically resist having oral sex performed on
10 him by you?

11 A. No, never.

12 Q. Did he ever push you away on any of those occasions?

13 A. No.

14 Q. Did he ever say orally at any time to you that he did not
15 want to engage in these activities with you?

16 A. No, never.

17 THE COURT: Did you make any promises to him in
18 connection with the oral sex or anal sex?

19 THE WITNESS: No, your Honor.

20 Q. Did you ever offer to help him become a waiter in return
21 for sexual favors?

22 A. No. We never spoke with Mr. Caravantes regarding that
23 possibility.

24 THE COURT: Who is "we"?

25 THE WITNESS: Mr. Caravantes and myself.

C44kcar2

Velandia - direct

1 Q. Did Mr. Caravantes ever say anything to you that suggested
2 to you that the sexual encounters between the two of you were
3 unwelcome.

4 A. No, he never did.

5 Q. Did you ever threaten Caravantes in any way?

6 A. No, I never threatened Caravantes, nor any other person.

7 Q. Did you ever take a photograph of Caravantes' genitals?

8 A. No.

9 Q. When was the last time that you and Caravantes engaged in
10 any type of sexual encounter?

11 A. Mr. Parker, in the same manner these encounters started,
12 that's how they ended. All of a sudden, they didn't happen
13 again, and neither one of us spoke about it.

14 THE COURT: When was that, that they stopped?

15 THE WITNESS: Your Honor, I think it was approximately
16 sometime in 2007.

17 THE COURT: 2007? How long before Mr. Caravantes
18 stopped working at Remi?

19 THE WITNESS: Well, I think -- your Honor, I think it
20 was a few months before that, but I'm not sure how many months.

21 THE COURT: He left in 2008. Does that change your
22 answer as to when it stopped?

23 THE WITNESS: Yes. Like I said, your Honor, it was
24 months before he stopped working there, but I think it was
25 sometime during 2007, perhaps towards the end.

C44kcar2

Velandia - direct

1 BY MR. PARKER:

2 Q. On any of the times when you had sex with Caravantes, did
3 you ever push him to the floor?

4 A. No. That would have been something difficult because
5 Caravantes is big and heavy person.

6 Q. What is your height and weight?

7 A. My height is five-five, and my weight is 150 pounds.

8 THE COURT: Is there anything that caused these
9 relations to stop? Can you think of anything that caused the
10 relations to stop?

11 THE WITNESS: No, your Honor. I don't know, we never
12 spoke about why they stopped, so I don't think it stopped...

13 THE COURT: Why did you stop asking him if he wanted
14 to stay late?

15 THE WITNESS: Because Caravantes started -- his
16 demeanor started changing and he seemed -- he appeared to be
17 angry towards people.

18 THE COURT: Did you ask him about that?

19 THE WITNESS: No, your Honor.

20 THE COURT: Did you ask him why he appeared to be
21 angry?

22 THE WITNESS: No, your Honor. It seems to me that in
23 2007 Mr. Pastor had filed a complaint. And for that same
24 reason, I assumed that was the reason why Mr. Caravantes wanted
25 to stop.

C44kcar2

Velandia - direct

1 THE COURT: What was the complaint that Mr. Pastorio
2 filed?

3 THE WITNESS: That Mr. Pastor had complained that they
4 had fired him, also complained regarding, saying that it was
5 because of my advances or my harassment.

6 THE COURT: Oh, this is Pastor?

7 THE WITNESS: Pastor.

8 THE COURT: Now, which Pastor are you talking about?

9 THE WITNESS: Sergio Pastor.

10 THE COURT: How did you learn that he had filed a
11 complaint?

12 THE WITNESS: Because I received a copy of the
13 complaint.

14 THE COURT: Who gave you the copy of the complaint?

15 THE WITNESS: It was sent to me, my name, by The
16 Department of Human Rights.

17 THE COURT: Was the complaint against you?

18 THE WITNESS: Yes, your Honor. The restaurant -- we
19 received a copy one for the restaurant, one for myself.

20 THE COURT: Is there any reason you can think of why
21 Mr. Caravantes would know about that complaint?

22 THE WITNESS: Yes, because Sergio Pastor and
23 Mr. Caravantes were very good friends.

24 THE COURT: What was Mr. Pastor's position, Sergio
25 Pastor's position at the time?

C44kcar2

Velandia - direct

1 THE WITNESS: Sergio Pastor used to work as a food
2 runner.

3 THE COURT: Why do you believe that they were good
4 friends?

5 THE WITNESS: Because he and Mr. Caravantes were
6 always talking together and always -- each time I would see
7 Mr. Caravantes, he would be together with Sergio Pastor, and
8 sometimes Sergio would go upstairs to the coffee station to
9 speak with Mr. Caravantes.

10 BY MR. PARKER:

11 Q. Mr. Velandia, do you know Francisco Sotarriba?

12 A. Yes, I know him.

13 Q. How do you know him?

14 A. Also when he came to work at the restaurant.

15 Q. What was your job at the restaurant when Sotarriba started
16 working there?

17 A. I was already a waiter.

18 Q. What was his job when he started there?

19 A. He was a busboy.

20 Q. Do you recall when Mr. Sotarriba started working at Remi?

21 A. I don't recall the year.

22 Q. About how long after you began working at Remi did
23 Mr. Sotarriba start there?

24 A. It could be a couple years or perhaps he started working
25 there in '99.

C44kcar2

Velandia - direct

1 Q. After Mr. Sotarriba began working at Remi, what was your
2 relationship with him?

3 A. Work relation, and then with the passage of time, then we
4 became good friends.

5 Q. Did you ever see one another socially outside of work?

6 A. Yes, many times. We would go out sometimes with him and
7 Pablo Solis and a waitress called Maybrighth, and then we would
8 go to bars or a dance club. And then on some occasions I went
9 to Mr. Sotarriba's house.

10 Q. When did that occur, when you went to bars and went to his
11 house?

12 MR. DELANEY: Objection, your Honor; form of the
13 question.

14 MR. PARKER: I can rephrase, Judge.

15 THE COURT: It is a double question.

16 BY MR. PARKER:

17 Q. During what period of time are you talking about where you
18 saw Mr. Sotarriba socially outside of work?

19 A. While he was working at the restaurant.

20 Q. What was Mr. Sotarriba's job at Remi after the new owners
21 came in?

22 A. He was a food runner.

23 Q. Did you ever engage in any of the type of touching with
24 Sotarriba that you described earlier, the buttocks, the
25 genitals over the clothing?

C44kcar2

Velandia - direct

1 MR. DELANEY: I am going to object again, your Honor;
2 it's a compound question.

3 THE COURT: I'll sustain the objection to the form of
4 the question. It calls for more than one conclusion.

5 MR. PARKER: I'm sorry, your Honor, I didn't hear.

6 THE COURT: It calls for more than one conclusion. It
7 involves two different actions.

8 BY MR. PARKER:

9 Q. Did you ever engage in any touching of Mr. Sotarriba's
10 buttocks at any time, while the two of you worked at Remi
11 together?

12 A. Yes.

13 Q. Did you ever engage in any touching of Mr. Sotarriba's
14 genitals over the clothing, at any time while you worked at
15 Remi?

16 A. Yes. That was part of our horseplaying in the restaurant.

17 Q. Were there any times where Mr. Sotarriba touched your
18 buttocks, while working at Remi?

19 A. Yes.

20 Q. And were there any times when Mr. Sotarriba touched your
21 genital area over the clothing, while working at Remi?

22 A. No, he never touched my genital area.

23 Q. When and where did the -- let's talk about when.

24 When did it first start to occur where you were
25 touching Sotarriba and Sotarriba was touching you?

C44kcar2

Velandia - direct

1 A. I think when we established a certain level of friendship.

2 Q. Can you estimate -- can you put a year on that? What year
3 was it?

4 A. I think it was shortly after he started working there,
5 because people arrive and soon enough they get familiar with
6 these things and start doing them.

7 Q. And you said he started, Sotarriba started, at Remi about
8 1999?

9 THE COURT: Started work, is what he said.

10 MR. PARKER: Started work, yes.

11 THE WITNESS: Yes, approximately.

12 Q. Would you describe, please, the types of touching that you
13 and Sotarriba engaged in with one another.

14 MR. DELANEY: It's been asked and answered, your
15 Honor.

16 THE COURT: Objection overruled. It's not a proper
17 objection.

18 THE WITNESS: Then in the same manner, it came with
19 friendship and the same, he would pass by and say something to
20 me and then touch, and I would do the same thing to him.

21 BY MR. PARKER:

22 Q. On these occasions where he would touch you or you would
23 touch him in the manner you described, was anything said?

24 A. No, short words, like I said before, for example, like
25 "mami"; I would say something vulgar in Spanish, I would say,

C44kcar2

Velandia - direct

1 for example, in Spanish "mi puta" and then especially
2 Mr. Sotarriba had the habit of calling "my flower," "oh,
3 flower," and he used to call all the guys, "hello, flower."

4 Q. What is your understanding of the phrase "mi puta"?

5 A. The word "puta" in Spanish is an abbreviation of the word
6 "prostitute." So when they call somebody puta, it's in the
7 most extensive or strongest sense of the vulgarity of the word.

8 Q. What did you understand the term "flower" to mean, in the
9 context in which Mr. Sotarriba used it?

10 A. In the context Mr. Sotarriba would use the word, it's as
11 though he was speaking to a woman, and he was calling her,
12 because of her being delicate or state of being delicate, he
13 would call her a flower.

14 Q. Did you ever observe Sotarriba engage in the type of
15 touching he did with you, with anyone else at Remi?

16 A. Yes, also to his group of friends.

17 Q. Who? Who was his group of friends?

18 A. Sometimes he would touch me, the other runners,
19 Mr. Caravantes --

20 THE COURT: Are you asking --

21 A. -- Sergio Pastor --

22 THE COURT: He's asking for names.

23 A. -- Caravantes, Sergio Pastor, he used to get along with
24 Luis Martinez like that, one of the cooks, and with some of the
25 busboys like Leonardo Sanchez -- no, it was Leonardo but it's

C44kcar2

Velandia - direct

1 not Sanchez, it was Valdo, and then I don't recall. At the
2 time that this was taking place, there were many other people
3 that were working at the restaurant who are no longer working
4 there.

5 Q. The touching that you and Sotarriba engaged in with one
6 another, where in the restaurant did these take place?

7 A. It would occur, but the fact that Mr. Sotarriba is a food
8 runner, that would occur on the floor or at his workstation
9 downstairs by the kitchen.

10 Q. When you say "on the floor," what do you mean by that?

11 A. Whenever we were ready in the room and we were doing
12 things, that's when these things would take place.

13 Q. Well, what does "floor" mean? Where is the floor?

14 A. The floor is the dining room.

15 Q. What times of the day did these touchings take place?

16 A. Usually that would take place before service or once the
17 service was already done. Because once the service starts,
18 there are people in the restaurant, and it could happen, but it
19 would be if they're way up in the front. But once the
20 restaurant is full, then one can no longer play like that
21 because people will notice.

22 Q. What time is the lunch service?

23 A. Employees arrive at 11:00, the restaurant opens at 12:00.
24 The restaurant opens at 12:00 and then it stays open all day
25 long, until 11:30, when it closes.

C44dcar3

Velandia - direct

1 Q. You said that the comments and the touching that you and
2 Sotarriba did with one another began shortly after he began
3 working at Remi.

4 When did the comments and the touching between you and
5 Sotarriba end?

6 A. With Mr. Sotarriba, I thought that he always played like
7 that and I never really noticed when it stopped. As a matter
8 of fact, I don't think they ever stopped between us.

9 Q. When did Mr. Sotarriba leave work at Remi?

10 A. I recall that Sotarriba left in June of 2008.

11 Q. What types of -- well, did you during these occasions where
12 you and Sotarriba touched one another make comments of any kind
13 to him?

14 A. Yes. I used to make comments to him, too.

15 Q. What kind of comments?

16 A. The same words he used to use at me, I would use them on
17 him.

18 Q. Did you ever use any different words other than the ones
19 that Sotarriba said to you?

20 A. No. Practically, they all used the same words.

21 THE COURT: What words were they using?

22 THE WITNESS: Yes, your Honor. Words like "mami,"
23 "puta." Also, we used to use "prosti," p-r-o-s-t-i, and
24 particularly Mr. Sotarriba, "flower."

25 Q. What did you understand the word "prosti" to mean?

C44dcar3

Velandia - direct

1 A. It's an abbreviation of prostitute.

2 THE COURT: Puta means whore, doesn't it?

3 THE WITNESS: In English, yes, but not in Spanish. In
4 Spanish it's the second word of "prostituta." It's closely
5 related to prostitute.

6 Q. Did you ever say to Sotarriba, "Let me suck you"?

7 A. No. Because in the same manner I never saw Sotarriba as
8 bisexual or gay so why would I tell him that?

9 Q. How frequently did you and Sotarriba engage in touching and
10 comments to one another?

11 A. All these games were sporadic. They were not daily. It is
12 in the same manner that one jokes with friends, we don't joke
13 around every day with friends.

14 Q. Was there ever a time when you were -- or was there any
15 period of time when you were touching Sotarriba in the manner
16 you described, 10 to 15 times every day?

17 A. No. That would have been impossible.

18 Q. Why?

19 A. Because he and I, we saw each other from 11 to 12 in the
20 dining room. That's an example. That would only allow one
21 hour and then the service with the customers starts, and we
22 can't be playing like that on the floor. Then I don't see how
23 I could possibly touch him 15 times in one hour; that's not
24 possible.

25 And then in the same manner it would be during dinner.

C44dcar3

Velandia - direct

1 And if we only have one hour, from 4 to 5, before service
2 starts, and if I was to touch him like 10 to 15 times, then I
3 would have to be on top of him so that I could touch him that
4 many times.

5 THE COURT: When you say you have to be on top of him,
6 what do you mean?

7 THE WITNESS: That, too, is one of our expressions.
8 By that I mean being next to you all the time.

9 BY MR. PARKER:

10 Q. Have you been in the locker room at Remi Restaurant?

11 A. Yes. At one point I had a locker.

12 Q. Did you ever see Sotarriba in the locker room?

13 A. Yes.

14 Q. Was there ever a time when you physically touched
15 Sotarriba's pants and attempted to pull them down while in the
16 locker room?

17 MR. DELANEY: Objection, your Honor. It is a leading
18 question.

19 THE COURT: Objection sustained.

20 Let's take the morning break and come back in about
21 five minutes.

22 (Recess)

23 THE COURT: Please proceed.

24 BY MR. PARKER:

25 Q. Mr. Velandia, other than the mutual touching between you

C44dcar3

Velandia - direct

1 and Sotarriba of buttocks and the genital area with your hands,
2 was there any other type of touching between the two of you
3 that occurred?

4 A. Well, yes. There were times when we were playing.
5 Somebody would squat down to pick something up. Another guy
6 would just come from behind and approach, touch him with his
7 genitals, that other guy's buttocks, as if to simulate a sexual
8 act.

9 Q. Did that, what you just described, ever occur between you
10 and Sotarriba?

11 A. Yes, I think that occurred also. Yes. Also, I think if I
12 ever bent over to pick something up, like a napkin, a dish or
13 something, then he will come around to the front and take my
14 head and simulate and push it towards his genitals as though --
15 as a sexual act as well.

16 Q. When did he do that?

17 A. That was also part of the playing around.

18 Q. During what period of time?

19 A. Well, in the period of time that when these things started
20 happening, when we started becoming familiar in the friendship,
21 until they stopped.

22 THE COURT: He would come around to the front of your
23 body?

24 THE WITNESS: Yes, to the front side.

25 THE COURT: And to the rear?

C44dcar3

Velandia - direct

1 THE WITNESS: Both things, the front or the back; it
2 could be both.

3 THE COURT: And what about you doing the same thing to
4 him when he bent over to pick up a napkin?

5 THE WITNESS: Yes. I did either touch the back or the
6 front, but I never liked the situation or the action which I
7 would touch him with my genitals. I never did.

8 THE COURT: Did you ever touch him with your genitals,
9 bare genitals?

10 THE WITNESS: No.

11 THE COURT: Did you ever touch him on his bare
12 genitals?

13 THE WITNESS: No.

14 THE COURT: Always outside the clothing?

15 THE WITNESS: Yes, always outside the clothing.

16 THE COURT: You never put your hand down his pants?

17 THE WITNESS: In Sotarriba's pants? No, never.

18 THE COURT: All right.

19 BY MR. PARKER:

20 Q. Did you ever attempt to pull Sotarriba's pants down?

21 A. No.

22 THE COURT: Did you observe his pants being pulled
23 down?

24 THE WITNESS: No. I didn't observe that either, your
25 Honor.

C44dcar3

Velandia - direct

1 THE COURT: Did you observe other people pulling his
2 pants down?

3 THE WITNESS: I never saw him play in that manner with
4 any other person.

5 BY MR. PARKER:

6 Q. Did you, on these occasions where you and Sotarriba engaged
7 in touching of one another, did you observe his reactions to
8 those events?

9 THE COURT: Reaction to what?

10 MR. PARKER: A reaction to the touching.

11 A. It was just to laugh, because remember that the objective
12 of this form of touching was just to cause laugh in the others.

13 Q. Well, how did Sotarriba react?

14 A. Oh, normal. He would either turn around and touch me or
15 touch the other person or just use words.

16 Q. What words?

17 A. If, for example, someone would tell him "You're my puta,"
18 or my whore, he would say, "No, you're my puta," or my whore.

19 Q. Did Sotarriba ever ask you to stop touching him in the
20 manner you described?

21 A. No. He never did.

22 THE COURT: Did anyone else touch him in that manner?

23 THE WITNESS: Yes, your Honor. All the friends of his
24 would touch him that way.

25 THE COURT: Who?

C44dcar3

Velandia - direct

1 THE WITNESS: Like I said before, he used to get along
2 with people in the kitchen. For example, Luis Martinez. The
3 other cooks, they used to get along in that manner but I don't
4 recall their names. And he used to get along in that manner
5 with Sergio Pastor. Also with Caravantes. Also with a busboy
6 called Leonardo. So, well, those are the names I can recall
7 right now.

8 Q. Did Sotarriba ever physically push you away at any time you
9 touched him or attempted to touch him in the way you have
10 described?

11 A. No. Never.

12 THE COURT: He told you he was not gay, is that right?

13 THE WITNESS: No, your Honor. He never said that to
14 me.

15 THE COURT: He never said that he was heterosexual?

16 THE WITNESS: No. He didn't mention that he was
17 heterosexual either.

18 THE COURT: You thought he was heterosexual?

19 THE WITNESS: Yes, because of his demeanor.

20 THE COURT: What in his demeanor caused you to believe
21 that he was heterosexual?

22 THE WITNESS: Because I never observed him making any
23 advances to any other men or making any other comment which
24 would lead me to think he was gay.

25 THE COURT: You are saying that the playing around

C44dcar3

Velandia - direct

1 that you have been referring to was engaged in by
2 heterosexuals, by people you believed to be heterosexual, as
3 well as homosexuals?

4 THE WITNESS: Yes, your Honor. In fact, that kind of
5 playing around has been established by heterosexuals.

6 THE COURT: How? How would they establish that
7 playing around?

8 THE WITNESS: I don't know, your Honor. But from all
9 the Mexicans, it must be in their culture because all the
10 Mexicans working in the restaurant, they are all heterosexuals
11 and they all joke in that manner.

12 THE COURT: That's why you believe heterosexuals
13 established the playing around?

14 THE WITNESS: (Through Interpreter) No, your Honor. I
15 don't think that they are heterosexual because they --

16 THE WITNESS: (To Interpreter) No. No. No.

17 (Through Interpreter) They play in such a manner even
18 though they're heterosexual, but that doesn't cause me to think
19 that they were gay or that they may be bisexual either.

20 THE COURT: All right.

21 BY MR. PARKER:

22 Q. Did Sotarriba ever say anything to you which indicated to
23 you that any of the touching that you've described was
24 unwelcome to him?

25 A. No. He never said anything to me.

C44dcar3

Velandia - direct

1 Q. Did you ever threaten to Sotarriba that you were going to
2 fire him?

3 A. No. I never did that.

4 Q. Did you ever have any conversation with Sotarriba about the
5 potential of him becoming a waiter at Remi?

6 A. No.

7 THE COURT: Did he ever ask you about becoming a
8 waiter?

9 THE WITNESS: No, your Honor, and I will explain to
10 you the reason why not.

11 Francisco Sotarriba became a food runner before the
12 new administration, or management, rather. When he came to be
13 a runner, the policy was to pay the runner the same as the
14 waiter, one point. When the new management came in, they
15 changed that policy and then they established that a food
16 runner is now earning only .75. Bearing in consideration that
17 he was the only old runner, because the rest of them were new,
18 so the new ones started earning .75, and he always continued to
19 earn the same as a waiter until the day he left. Therefore, he
20 didn't have any good reasons for becoming a waiter because his
21 tips were not increased.

22 THE COURT: In addition to tips, did waiters and other
23 employees get a salary?

24 THE WITNESS: Yes. We get paid for the hours.

25 THE COURT: What rate do the waiters get?

C44dcar3

Velandia - direct

1 THE WITNESS: Waiters and food runners earn the same,
2 which I think currently is 6.25 or 7.75, something like that.

3 THE COURT: And that was true under the old
4 management?

5 THE WITNESS: Yes, it was the same.

6 THE COURT: And it was also true under the new
7 management?

8 THE WITNESS: Yes, your Honor.

9 THE COURT: OK.

10 BY MR. PARKER:

11 Q. Mr. Velandia, referring back to your earlier testimony
12 about the touching that you and Caravantes engaged in together,
13 at any of those times did either of you make oral comments to
14 the other?

15 A. I think there could have been comments, but I don't recall
16 specific words.

17 Q. Do you know Sergio Pastor?

18 A. Yes, I know him.

19 Q. How do you know him?

20 A. He came to work at Remi's also.

21 Q. What was his job at Remi?

22 A. Initially, I think it was either a white jacket or a
23 dishwasher, but I'm not sure.

24 Q. Do you remember when, the period of time during which he
25 worked at Remi?

C44dcar3

Velandia - direct

1 A. I think perhaps he started working in 2003 or 2004.

2 Q. And when did he leave?

3 A. I think it was in 2007 but I'm not sure. I think it was
4 2007.

5 Q. Were there any occasions where -- you testified earlier
6 that you observed Sotarriba and Sergio Pastor engaged in
7 touching. What did you see them do together?

8 A. They had more opportunities of playing around like that
9 because they together were food runners simultaneously. And
10 the same thing, I would see the same thing, them touching each
11 other's behind or simulating sexual acts and things of that
12 nature.

13 Q. Did you and Sergio Pastor ever engage in any of the type of
14 touching you've described here today?

15 A. Yes. We did, too.

16 Q. What specifically did you do and did he do?

17 A. He would usually touch me on the rear or, also, come from
18 behind and simulate a sexual act, or usually I would also touch
19 him in his behind or the front side.

20 Q. Did you ever proposition Sergio Pastor to engage in any
21 sexual act with you?

22 A. No. Never.

23 Q. Did you ever perform oral sex on Sergio Pastor?

24 A. No.

25 Q. Did you ever attempt in any way to convince him to engage

C44dcar3

Velandia - direct

1 in oral sex with you?

2 A. No.

3 Q. Did you ever put your hand inside Sergio Pastor's pants for
4 any reason?

5 A. No. Never.

6 Q. Did your hand ever come in contact with the skin of Sergio
7 Pastor's genitals?

8 A. No. Never.

9 Q. Are you familiar with the circumstances of Sergio Pastor's
10 departure from employment at Remi?

11 A. Yes. I heard what happened.

12 Q. Did you have any personal involvement in any of the
13 circumstances leading up to his departure from Remi?

14 MR. DELANEY: Objection. Leading.

15 THE COURT: Objection overruled.

16 A. Mr. Parker, when you say a personal involvement, what are
17 you referring to?

18 Q. Were you present at any meeting or discussion about Sergio
19 Pastor's departure from Remi?

20 MR. DELANEY: Objection. Leading.

21 THE COURT: I will allow the question.

22 A. Yes, I was present.

23 THE COURT: Who else was present?

24 THE WITNESS: Mr. Francesco Pistorio, Mr. Augustine
25 Pena, and Giovanni Pinato, the chef of the restaurant.

C44dcar3

Velandia - direct

1 THE COURT: Mr. Pastor was not present?

2 THE WITNESS: Yes. I'm sorry, your Honor. Sergio
3 Pastor was there as well with us.

4 THE COURT: Anyone else aside from Sergio Pastor?

5 THE WITNESS: No. Only the ones I just mentioned --
6 Mr. Pistorio, Mr. Augustine Pena, Giovanni Pinato, Oscar
7 Velandia and Sergio Pastor.

8 BY MR. PARKER:

9 Q. Where did that meeting take place?

10 A. The restaurant's office, which is located in the basement.

11 Q. How did it come to be that you were in attendance at that
12 meeting?

13 A. Because I understood from Mr. Pistorio that Sergio Pastor
14 engaged into a fight with Julio Cuellar.

15 THE COURT: Was this before or after you received the
16 complaint?

17 THE WITNESS: After.

18 (Pause)

19 I'm sorry. I'll take that back. Before.

20 THE COURT: Why do you say that?

21 THE WITNESS: Because I now recall that Sergio Pastor
22 wanted to file a complaint after he left the restaurant.

23 THE COURT: A complaint against you?

24 THE WITNESS: Yes.

25 BY MR. PARKER:

C44dcar3

Velandia - direct

1 Q. You were saying that you understood that there had been a
2 fight between Sergio Pastor and Cuellar?

3 A. Correct. And then the day these events occurred, I wasn't
4 there --

5 THE COURT: What was your understanding of why you
6 were present if you weren't a part of the management?

7 THE WITNESS: Because Mr. Pistorio asked me to
8 translate for Sergio Pastor.

9 THE COURT: You come from Colombia, not Mexico?

10 THE WITNESS: Yes, your Honor.

11 THE COURT: And he speaks a Mexican dialect, right?

12 THE WITNESS: No. He also speaks Spanish, just like I
13 do.

14 THE COURT: They are different dialects, aren't they?

15 THE WITNESS: Well, your Honor, what I have understood
16 is that a dialect is like language or words that are different,
17 but there is not such a difference between us.

18 THE COURT: Well, people translate from Mexican
19 different than they do from Colombian, don't they? They
20 translate the Spanish differently, don't they?

21 THE WITNESS: I'm not sure of that.

22 THE COURT: Words have certain meanings depending on
23 which culture you come from, no?

24 THE WITNESS: Yes. Some words but....

25 THE COURT: Like "puta"?

C44dcar3

Velandia - direct

1 THE WITNESS: No. I think that's global, it's
2 international. In all countries where Spanish is spoken, they
3 know what puta means.

4 THE COURT: In some places it means "bitch," doesn't
5 it?

6 THE WITNESS: Probably.

7 THE COURT: In other places it means "prostitute,"
8 doesn't it?

9 THE WITNESS: Yes. Even in Colombia, like every
10 person could give it a slightly different meaning as they see
11 it fit, but the essence of the word is always the same.

12 THE COURT: Puta in certain countries are fighting
13 words, no?

14 THE WITNESS: Probably.

15 THE COURT: Not "probably," yes or no?

16 THE WITNESS: Your Honor, but what do you mean by a
17 fighting word?

18 THE COURT: Make people angry.

19 THE WITNESS: Yes. I agree with you somehow. But
20 then in our country, if there is a fight between two men, they
21 are not calling each other puta. The word puta is only used to
22 refer to a woman. So if there is a fight between two women,
23 they would call each other puta, or if there is one between a
24 man and a woman, but it's used by the men to use that against a
25 woman.

C44dcar3

Velandia - direct

1 THE COURT: Go ahead.

2 BY MR. PARKER:

3 Q. Prior to this meeting, you said you had learned that there
4 had been a fight, correct?

5 A. That's correct.

6 MR. DELANEY: Objection. Leading.

7 MR. PARKER: I am just bringing him back to the
8 subject that he already testified to.

9 MR. DELANEY: I don't think that was his testimony.

10 THE COURT: Objection sustained as to whether or not
11 there was a fight between them, but I will allow it as to his
12 belief, his state of mind.

13 MR. PARKER: May I have that question read back, your
14 Honor?

15 THE COURT: Yes, you may.

16 (Question read)

17 A. Correct.

18 Q. Were you -- did you witness any altercation between Sergio
19 Pastor and Mr. Cuellar?

20 A. No. As I said before, it was my day off; I was not at the
21 restaurant.

22 Q. Did you prior to the meeting that you identified with the
23 five individuals, including yourself, have any conversation
24 with Sergio Pastor about the meeting?

25 A. No. I didn't have any conversation. Only that when I came

C44dcar3

Velandia - direct

1 into the restaurant, everybody was talking about a fight.

2 Q. Prior to the meeting that you've identified with Pena,
3 Pistorio, Giovanni, you and Sergio Pastor, did you ever tell
4 Sergio Pastor that you were going to fire him?

5 A. No.

6 (Continued on next page)

C44kcar4

Velandia - direct

1 BY MR. PARKER:

2 Q. Had you worked --

3 THE COURT: Did you have a conversation with him prior
4 to the meeting, about the meeting?

5 THE WITNESS: No, I didn't have any conversation
6 regarding the fight or what had happened.

7 THE COURT: Did you have a conversation with him about
8 what was going to occur at the meeting?

9 THE WITNESS: No, because Mr. Pistorio was the one who
10 was going to preside over the meeting, and I didn't know what
11 was going on his mind.

12 THE COURT: Did you have any conversation with
13 Mr. Sergio Pastor about the nature of the meeting, before the
14 meeting?

15 THE WITNESS: No, not before the meeting, no.

16 THE COURT: He didn't ask you about the meeting,
17 before the meeting?

18 THE WITNESS: No, it was a surprise that Sergio had
19 gotten fired, because even the day of the fight, Mr. Pistorio
20 was there and they closed the restaurant and nothing was said
21 to him.

22 THE COURT: I asked you a question. The question was:
23 Did Mr. Sergio Pastor ask you anything about the meeting before
24 the meeting?

25 THE WITNESS: No, he didn't ask anything to me.

C44kcar4

Velandia - direct

1 THE INTERPRETER: "He didn't ask me anything."

2 THE COURT: I didn't ask that. I asked him whether
3 Mr. Pastor asked anything about the meeting, of Mr. Velandia.
4 Did he tell you about the meeting?

5 THE WITNESS: Excuse me, your Honor, you are asking me
6 whether Sergio Pastor asked me anything or Mr. Pistorio asked?

7 THE COURT: Sorry, Sergio Pastor, did he tell you that
8 the meeting was going to occur?

9 THE WITNESS: No, your Honor, because he didn't know
10 the meeting was going to take place.

11 THE COURT: Someone has to know that the meeting would
12 take place in order to attend the meeting.

13 THE WITNESS: OK, now I understand, your Honor. What
14 happened is that Mr. Pistorio called for the meeting, called
15 Giovanni and Pena first --

16 THE COURT: Were you present when he did that?

17 THE WITNESS: -- and I was upstairs.

18 THE COURT: Were you present when he called Pistorio
19 and Giovanni?

20 THE WITNESS: No, I was upstairs.

21 THE COURT: You don't know then. I want to know what
22 you know.

23 THE WITNESS: What I know is that Mr. Pistorio called
24 me while I was upstairs and told me to go look for Sergio and
25 bring him over, we're going to have a meeting.

C44kcar4

Velandia - direct

1 THE COURT: So did you go to look for Sergio?

2 THE WITNESS: Yes. I went downstairs and he was at
3 the runner station. And all I said to him was, Mr. Pistorio
4 wants to speak with you. And once we got to the office, Pena
5 and Mr. Giovanni was there already.

6 THE COURT: Did Sergio Pastor ask you any questions
7 when you told him Mr. Pistorio wants to speak with you?

8 THE WITNESS: No, he didn't ask me anything. He just
9 followed me.

10 THE COURT: Did you tell him, while you were walking
11 to the room, what the meeting was about?

12 THE WITNESS: No, your Honor. I didn't know what the
13 meeting was about.

14 BY MR. PARKER:

15 Q. Did you bring Sergio Pastor into the meeting?

16 A. Yes. I entered the office with him.

17 Q. What happened at that meeting?

18 A. Then he told Mr. Pistorio that he assumed the reason why he
19 was being called into the office, because he had had a fight.
20 And Mr. Pistorio told him that he wanted me to be there to
21 interpret for them, and he also wanted Giovanni and Pena from
22 the kitchen to be there as well.

23 THE COURT: Mr. Pistorio speaks Italian?

24 THE WITNESS: Yes.

25 THE COURT: As far as you know, Sergio Pastor doesn't

C44kcar4

Velandia - direct

1 speak Italian; is that correct?

2 THE WITNESS: Yes, that's correct, your Honor, but
3 Mr. Pistorio conducted the meeting in English.

4 THE COURT: So you had to interpret for Mr. Sergio
5 Pastor into Spanish?

6 THE WITNESS: Yes, that's correct.

7 THE COURT: When you came into the room, you
8 translated for Mr. Pistorio and told Mr. Sergio Pastor that he
9 was being called into the office because he had had a fight?

10 THE WITNESS: No, that's what Mr. Pistorio told him,
11 you know you had a fight and that's the reason why we're having
12 a meeting.

13 THE COURT: And you translated that language?

14 THE WITNESS: Yes, I translated, even though I know
15 that most of them understand English. I did it because that's
16 what Mr. Pistorio wanted me to do.

17 THE COURT: All right.

18 BY MR. PARKER:

19 Q. After that was said, what happened?

20 A. Then Mr. Pistorio asked -- he told Sergio that that was not
21 the first fight he had since he's been working there, and that
22 he told him that Julio Cuellar had gone the night before to the
23 police precinct to file a report. And he told him, due to
24 those circumstances he had to fire him because he didn't -- he
25 couldn't allow that situation to go on there.

C44kcar4

Velandia - direct

1 THE COURT: Because I didn't -- because you didn't
2 allow that situation to go on there?

3 THE WITNESS: Mr. Pistorio said that he could not
4 allow that to continue happening.

5 THE COURT: Earlier in your answer you said "because I
6 couldn't allow the situation to go on there."

7 THE WITNESS: No, perhaps it was due to the
8 translation. But that's not what I told him.

9 THE COURT: Is that what you told the interpreter?

10 THE WITNESS: I was interpreting, and those were the
11 words of Mr. Pistorio.

12 THE COURT: Is that what you told the interpreter here
13 today?

14 THE WITNESS: No, I told the interpreter that
15 Mr. Pistorio started speaking. And those are not my words but
16 his.

17 BY MR. PARKER:

18 Q. How did the meeting end?

19 A. Sergio told him that he understood, and he left.

20 Q. Did you play any role in the decision to terminate Sergio
21 Pastor's employment?

22 A. No, I didn't have anything to do with that.

23 THE COURT: Other than translating?

24 THE WITNESS: Yes, sir, only translating.

25 THE COURT: Did you give any report on how good a

C44kcar4

Velandia - direct

1 worker Mr. Sergio Pastor was?

2 THE INTERPRETER: Please read that back to me.

3 (Record read)

4 THE WITNESS: I don't understand the question.

5 THE COURT: During the meeting, did you give a report
6 on how good a worker Mr. Sergio Pastor was?

7 THE WITNESS: No, your Honor. Mr. Pistorio was the
8 one that mentioned. He said to Sergio, you're a good worker
9 but because of your fight, I have to fire you.

10 THE COURT: Did you give any report on his being --
11 Mr. Sergio Pastor being -- late, or other things that would
12 reflect on him?

13 THE WITNESS: No, your Honor, because, as a matter of
14 fact, Sergio was always early to work, he was always a good
15 worker. In the opinions regarding employees, only Mr. Pistorio
16 gives them.

17 BY MR. PARKER:

18 Q. Did you know Moises Pastor?

19 A. Yes, I met him too.

20 Q. How did you know Moises Pastor?

21 A. He came to work at the restaurant too.

22 Q. What job did he have at the restaurant?

23 A. I think he started as a white jacket or as a busboy.

24 Q. Did he have any other jobs at Remi?

25 A. No, I think all he did was a busboy.

C44kcar4

Velandia - direct

1 Q. When did Moises Pastor work at Remi?

2 A. I think he came to work in 2005, because he came with the
3 new management.

4 Q. Did you and Moises Pastor ever engage in the type of
5 touching of the buttocks and the genital area over the clothing
6 that you've described here today?

7 A. Yes, sir, that too.

8 Q. Describe those circumstances, please.

9 A. Yes. It was as I described before; it was touching and
10 exchanging words.

11 Q. How frequently did that occur?

12 A. Every now and then.

13 Q. You said that there were comments. What types of comments
14 were made by either one of you at the times that the touching
15 occurred?

16 A. It was also the same words used, as just calling each other
17 mami and those other words.

18 Q. Where did these events take place?

19 A. The same manner, upstairs in the dining room or downstairs
20 in the kitchen.

21 Q. Were there any times where you observed Moises Pastor
22 engage in that same kind of touching you described, and
23 comments you've described, with other employees at Remi other
24 than yourself?

25 A. Yes, as well.

C44kcar4

Velandia - direct

1 Q. What other employees did you observe engage in that type of
2 conduct with Moises Pastor?

3 A. Moises Pastor used to get along like that with Jose Ortiz
4 and myself and Mr. Sotarriba, and with other busboys but I
5 don't recall their names. Perhaps he used to get along in the
6 same manner with Osvaldo.

7 Q. Did you ever put your hand in Moises Pastor's pants?

8 A. Please repeat the question.

9 Q. Yes. Did you ever put your hand in Moises Pastor's pants?

10 A. No, never.

11 Q. Did you ever touch the skin of his genital area with your
12 hand?

13 A. No.

14 Q. Did you ever perform oral sex on Moises Pastor?

15 A. No.

16 Q. Did you ever attempt in any way to do so?

17 A. No.

18 Q. Did you ever proposition Moises Pastor to engage in oral
19 sex with you?

20 A. No, I never did that.

21 Q. Did you ever engage in anal sex with Moises Pastor?

22 A. No.

23 Q. Did you ever proposition him to engage in anal sex with
24 you?

25 A. No.

C44kcar4

Velandia - direct

1 Q. Were you aware of Moises Pastor's age at any time while he
2 worked at Remi?

3 A. No.

4 Q. Were you aware of Sergio Pastor's age at any time while he
5 worked at Remi?

6 A. No, I never knew. I never knew how old they were.

7 Q. Other than the touching that occurred between the two of
8 you --

9 MR. PARKER: Let me strike that.

10 Q. Were there times when Moises Pastor touched you?

11 A. Yes, he used to also touch me.

12 Q. Where did he touch you?

13 A. He used to touch my ass.

14 Q. What did he touch your ass with?

15 A. No, he used to touch my behind with his hand, and sometimes
16 he would do it with his genitals.

17 Q. In what way did he do it with his genitals?

18 A. Also suggested as though he was penetrating me, but he had
19 his pants on and so did I.

20 THE COURT: Did he have an erection?

21 THE WITNESS: No, no.

22 Q. Were there ever any times where you sat on Moises Pastor's
23 lap?

24 A. No.

25 Q. While Moises Pastor was employed at Remi, was that during

C44kcar4

Velandia - direct

1 the period of time when, as you had testified, you and Pablo
2 Solis were in charge of distributing tips?

3 A. Yes, that's correct.

4 Q. Did Remi have any policy during that time, or practice
5 during that time, about whether or not tip advances could be
6 given to employees?

7 MR. DELANEY: Your Honor, I'll object; compound
8 question. Policy and practice are two different things.

9 THE COURT: Could you ask it differently?

10 MR. PARKER: Yes, your Honor.

11 Q. During the time that you were in charge of distributing
12 tips, along with Pablo Solis, was there any rule at Remi about
13 whether tip advances could be provided to employees?

14 A. Well, there was not such a rule, but in case anybody -- for
15 example, Italian waiters, before they left, they would ask for
16 their tip even though it was not the day for them to get paid.
17 And when I say leaving, it's when they were going to leave the
18 country, that they needed to have the money quickly.

19 And so that's one of the instances in which an advance
20 would be given, but not everybody would be asking for advances.
21 I would say that's not our normal practice at Remi, that people
22 don't come to ask for advances.

23 Q. Did Moises Pastor ever ask for tip advances?

24 A. Yes, he did.

25 THE COURT: Who?

C44kcar4

Velandia - direct

1 MR. PARKER: Moises Pastor.

2 THE COURT: Of you?

3 THE WITNESS: Yes, he asked me on some occasions,
4 because me and Pablo were in charge of distributing the money.
5 So sometimes if he asked Pablo for the money, Pablo would give
6 him some, but if Pablo wasn't in, then he would come to me.

7 BY MR. PARKER:

8 Q. And were there times where you gave Moises Pastor tip
9 advances?

10 A. Yes, sir.

11 Q. Did you ever, as a condition of giving Moises Pastor a tip
12 advance, request oral sex from him?

13 A. No, never.

14 Q. Was there ever a time where --

15 THE COURT: Did you ever have oral sex with him?

16 THE WITNESS: No, your Honor, never.

17 Q. Did you ever tell Moises Pastor that you were firing him
18 from Remi?

19 A. No, never.

20 Q. Would you turn in the --

21 THE COURT: Let's take the luncheon break. It's
22 1:00 o'clock. We'll come back at 2:00.

23 (Luncheon recess)

24

25

C44kcar4

AFTERNOON SESSION

2:19 P.M.

(In open court)

THE COURT: OK, continue.

OSCAR VELANDIA, resumed.

DIRECT EXAMINATION CONTINUED

BY MR. PARKER:

Q. Mr. Velandia, you testified earlier that there were occasions where you stayed at Remi Restaurant to close the restaurant at night?

A. Yes, that's correct.

Q. What activities are involved in closing the restaurant at night?

A. At the end of the night, the report -- in order to close, I have to wait for all waiters to finish. And when each waiter finishes, he gives me his report. Then I print out a general report, which includes everything. Then, after that, I have to take everything, put it together, bring it into the office, including the cash. Then I put it in the safe box, then I go upstairs and I start closing all the doors. Then I finally turn off all the lights. Then I -- I also turn out the light from the bar, and I physically exit the restaurant, and then I close the door behind me.

THE COURT: What do you do with the keys?

THE WITNESS: The front door's key, I keep it with me.

C44kcar4

1 Q. On any of those occasions where you closed the restaurant,
2 was Mr. Caravantes present?

3 A. Yes. The period that he was assigned to work, from
4 12:00 to 2:00 in the morning, he was there. But after that
5 time period was over, he was no longer there.

6 Q. During the time that --

7 THE COURT: Was anyone else present during that
8 period?

9 THE WITNESS: Yes, your Honor. Sometimes the closing
10 waiter was waiting as well as the bartender would wait for me,
11 Jose Ortiz.

12 BY MR. PARKER:

13 Q. During the time when Caravantes was staying at the
14 restaurant until 2:00 a.m., who left first, you or Caravantes,
15 when you closed the doors?

16 A. No, I always used to come out first and close the door and
17 he would stay inside.

18 THE COURT: What about the other men or the other
19 closing waiter and the bartender?

20 THE WITNESS: If anybody else was there, they would
21 have to leave with me, because only Caravantes would be allowed
22 to stay in the restaurant and the two dishwashers who were
23 cleaning downstairs, the porters.

24 THE COURT: What period of time are we talking about,
25 Mr. Parker? I don't understand the testimony.

C44kcar4

1 MR. PARKER: I'll ask that question, Judge, to make it
2 clear.

3 BY MR. PARKER:

4 Q. You said there was a time period when Caravantes was
5 working from midnight till 2:00 a.m. in the restaurant.

6 Approximately when was that?

7 A. Well, I really don't know the exact date when he started
8 working, but he worked from 12:00 to 2:00, but he would have to
9 wait for the porters to leave before he would leave. And that
10 happened during the new administration.

11 Q. Would you turn, please, in the exhibit book, the
12 Defendants' Exhibit book, to tab 62.

13 A. From Plaintiff or Defendants'?

14 Q. Defendants'.

15 A. OK, I got it.

16 Q. Do you have D62?

17 A. Yes, sir, I have it.

18 Q. Do you know what that photograph represents?

19 A. Yes. This is the front of the restaurant.

20 Q. The photograph shows two doors on the right-hand side, with
21 writing above it, "145 W 53," are they the front doors to the
22 restaurant?

23 A. Yes. That's the main door for access to the restaurant.

24 Q. When you closed the restaurant, did you lock these doors?

25 A. Yes. These are the last doors that have to be locked in

C44kcar4

1 order to secure the restaurant.

2 Q. How do you lock these two doors?

3 A. Both doors have on the lower part, they have a lock. And
4 there is a master key; with only one key you close or you lock
5 both locks.

6 Q. Where are the locks on the doors?

7 A. All the way down the bottom, the lower portion of the door.

8 Q. There appear to be two circles on the photograph down near
9 the very bottom of the doors. Are they the locks?

10 A. Yes, those are the locks.

11 Q. Were there ever times when you locked these doors from the
12 outside, when Caravantes was still inside the restaurant?

13 A. Yes. Each time I was doing the closing, I will lock the
14 doors -- I would exit and then lock the doors, and he would
15 remain inside.

16 Q. Was there ever a time when Caravantes was standing
17 immediately on the other side of the door while you were
18 locking the door?

19 A. Yes. Sometimes he would physically walk with me to the
20 door, bid me farewell, and I would go to the other side of the
21 glass doors. And he would be inside, right on the other side
22 of the doors.

23 Q. Were there ever any occasions where he said or did anything
24 from the other side of the door while you were locking the
25 door?

C44kcar4

1 A. Yes. Sometimes -- normally jokingly, as I would bend over
2 or squat down to close the bottom locks, which are by the
3 floor, he would approach the door and place or press his
4 genitals against the glass of the door as I was closing, and he
5 would motion from side to side, and then his genitals would be
6 on the other side of the door but in front of my face.

7 Q. What did you understand him to be doing?

8 A. Well, he was suggesting that, as he was pressing his
9 genitals against the door -- it was making believe like he was
10 doing it in front of my face.

11 Q. Did he ever do that in the presence of anyone else?

12 A. Yes. Sometimes he had done it in front of the bartender,
13 whose name is Jose Ortiz. And while he was rubbing his
14 genitals against the door, he would just laugh and watching for
15 a reaction.

16 Q. How many times did he do that, Mr. Velandia?

17 A. He did that many times.

18 THE COURT: He was fully clothed, though, right? He
19 was fully clothed?

20 THE WITNESS: Yes, he was fully clothed.

21 MR. PARKER: I have no further questions.

22 THE COURT: Cross-examination?

23 If he was still inside the restaurant and you had
24 locked the doors, how did he get out?

25 THE WITNESS: There are two lateral emergency doors,

C44kcar4

1 exits, which are facing the atrium. And as per orders of the
2 fire department, those don't bear locks; they're opened simply
3 by pressing a lever. And that's the door that Caravantes would
4 use when he was leaving with the porters. And once the door
5 closes, there is no way you can reopen it.

6 And then they would walk either out the door through
7 54th Street or 53rd, through some gates which are placed there
8 at 7:00 at night.

9 THE COURT: OK. When you left the restaurant, after
10 having had sex with Mr. Caravantes, what door would you use to
11 exit? Would it be before or after you locked the front doors?

12 THE WITNESS: Your Honor, when this was going to
13 occur, I would usually close the door from inside. And after
14 the encounter is over, then I would unlock the front door again
15 and leave through that door. I would close it, lock it back.

16 (Continued on next page)
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C44dcar5

Velandia - cross

1 THE COURT: All right. Please proceed, Mr. Delaney.

2 MR. DELANEY: Your Honor, I am going to hand up the
3 deposition transcripts.

4 THE COURT: Yes. We need a copy.

5 CROSS-EXAMINATION (Through the Interpreter)

6 BY MR. DELANEY:

7 Q. Mr. Velandia, you became headwaiter in 2005, correct?

8 A. Approximately between 2005 and 2006.

9 Q. You were the only headwaiter at that time?

10 A. No. But there were others. There were others.

11 Q. Prior to that time there was no headwaiter position,
12 correct?

13 A. No, not during the old management.

14 Q. When the new management took over in April 2005, there was
15 no headwaiter position?

16 A. No. No, sir.

17 Q. There was no headwaiter position until you were made
18 headwaiter by Mr. Pistorio?

19 A. I would say yes.

20 Q. Now, yesterday you said there were other headwaiters. One
21 of them was Alessandro Mancino?

22 A. Yes. Correct.

23 Q. And Michelle Tabossi?

24 A. Yes.

25 Q. I am going to ask you to look in the plaintiffs' exhibit

C44dcar5

Velandia - cross

1 binders on P-110. So it is Tab 110 of the exhibit binders.

2 That is the deposition binder. I think you are
3 looking for the big ones up front there.

4 THE COURT: You are going to exhibit binders now?

5 MR. DELANEY: Yes, sir.

6 THE COURT: 110?

7 MR. DELANEY: 110.

8 THE COURT: All right.

9 THE INTERPRETER: You said 110?

10 MR. DELANEY: 110.

11 THE INTERPRETER: P, Plaintiffs'.

12 MR. DELANEY: P-110.

13 THE COURT: All right. I have it.

14 MR. DELANEY: I am just waiting for the witness, your
15 Honor.

16 (Pause)

17 THE COURT: Do you have a question?

18 MR. DELANEY: Yes, your Honor. I am just waiting for
19 the witness to find the exhibit.

20 The tabs are sequentially numbered so it is 109, 110.

21 THE COURT: What are you looking for? 110?

22 (Pause)

23 It would speed things up, Mr. Delaney, if you could
24 step up and pick out the exhibits so that he can look at it.

25 MR. DELANEY: I would be happy to, your Honor.

C44dcar5

Velandia - cross

1 THE COURT: Instead of standing there.

2 BY MR. DELANEY:

3 Q. Do you have 110 in front of you, Mr. Velandia?

4 A. Yes.

5 Q. You recognize this as these are the work schedules we
6 discussed yesterday, correct, or you discussed with Mr. Parker?

7 A. Yes, correct.

8 Q. Can you turn -- do you see on the bottom, Mr. Velandia, do
9 you see it says, "Page 1 of 60," do you see that?

10 A. Yes.

11 Q. Can you turn to page 8 -- 8 -- of 60 for me.

12 A. I got it.

13 Q. I'm going to direct your attention to the top left of the
14 document. Do you see your name?

15 A. Yes.

16 Q. And do you see next to it the words "Head Server"?

17 A. Yes, I see it.

18 Q. If you go down four rows, do you see the name Michelle
19 Tabossi?

20 A. Yes, I see it.

21 Q. And we can agree that next to Mr. Tabossi's name it just
22 says "server," correct?

23 A. Yes, correct.

24 Q. It does not say head server?

25 A. Yes, correct.

C44dcar5

Velandia - cross

1 Q. If you go down five more rows, do you see Alessandro
2 Mancino?

3 A. I see it.

4 Q. And do you see next to his name, it says "new server,"
5 correct?

6 A. Yes.

7 Q. It also does not say head server?

8 A. No.

9 Q. Can you turn to page 22 of Plaintiffs' 110.

10 THE COURT: What page?

11 MR. DELANEY: 22 of Plaintiffs' 110.

12 THE COURT: 22 of 60?

13 MR. DELANEY: Yes, your Honor.

14 Q. Again, I will direct your attention to the top left.

15 Do you see your name there?

16 A. OK.

17 Q. And do you see to the right it says "Head Server" again?

18 A. Yes.

19 Q. And if you go about two-thirds of the way down, under the
20 servers, do you see Alessandro Mancino again?

21 A. Yes.

22 Q. And to the right of his name it just says "server,"
23 correct?

24 A. Yes. It says just server.

25 Q. It does not say head server, does it?

C44dcar5

Velandia - cross

1 A. Yes. So I actually have to call your attention to the fact
2 that when Alessandro Mancino came from Florida, Mr. Pistorio
3 already knew him and so he would also give him attributes,
4 those of a headwaiter. And the same situation with Michelle
5 Tabossi.

6 Q. Mr. Velandia, your testimony was that they were head
7 servers, correct; and they do not appear as head servers on
8 these schedules, do they?

9 A. Not on the schedule.

10 Q. In fact, only you appear as head server on these schedules?

11 A. Correct. On that schedule, yes.

12 Q. And another head server you named -- or another person you
13 named as a head server yesterday was Stacy Crowe, correct?

14 A. Yes, correct.

15 Q. Now, Ms. Crowe did not start at the restaurant until 2008,
16 correct?

17 A. Yes, that's correct.

18 Q. And if you turn to page 34 -- I apologize, page 35 of
19 Plaintiffs' 110.

20 A. OK.

21 Q. Now, this document doesn't have a date on it, but I'll
22 represent to you it is in November 2008.

23 Do you see Ms. Crowe's name about two-thirds of the
24 way down under the servers.

25 MR. DELANEY: Under the servers, Randall. Right

C44dcar5

Velandia - cross

1 there.

2 A. Yes.

3 Q. Again, to the right, she is just listed as a server,
4 correct?

5 A. Yes. Initially she started out as a waitress. Then she
6 was promoted to head waitress.

7 Q. Now, November of 2008 --

8 THE COURT: This is what exhibit?

9 MR. DELANEY: This is Plaintiffs' Exhibit 110.

10 THE COURT: Page?

11 MR. DELANEY: Page 35 of 60, your Honor.

12 THE COURT: All right.

13 Q. So your testimony is Ms. Crowe was made a head server after
14 this point?

15 A. Yes.

16 Q. And we can agree that November 2008 is after Mr. Caravantes
17 left the restaurant?

18 A. Correct.

19 Q. We can also agree that Mr. Pistorio left the restaurant
20 before November 2008, correct?

21 A. Yes, that too.

22 Q. In fact, Mr. Pistorio left the restaurant in May 2008,
23 correct?

24 A. Yes, that's correct.

25 Q. So Ms. Crowe was not made a head server during the time

C44dcar5

Velandia - cross

1 Mr. Pistorio was there?

2 A. No. That's correct.

3 THE COURT: Mr. Velandia, do you see the name of
4 Alvise Marangoni on that page, page 110, page 35 of 60?

5 THE WITNESS: Yes, your Honor. I see it.

6 THE COURT: And what position is he said to hold?

7 THE WITNESS: There he's -- his position is head
8 server.

9 THE COURT: Is your name on that list?

10 THE WITNESS: Yes, sir.

11 THE COURT: What position would you have been, does
12 that have you listed as?

13 THE WITNESS: It says "party manager" there.

14 THE COURT: Does that mean you were in the Rialto
15 Room?

16 THE WITNESS: Correct, your Honor.

17 THE COURT: And you were the manager?

18 THE WITNESS: That's when that first started.

19 THE COURT: Well, no. This I think is dated after
20 Mr. Caravantes had left.

21 THE WITNESS: Correct, your Honor.

22 BY MR. DELANEY:

23 Q. Mr. Velandia, staying with Plaintiffs' Exhibit 110, can you
24 go one page before, on page 34 of 60.

25 A. Yes.

C44dcar5

Velandia - cross

1 Q. Again, do you see your name at the top? It says, "Oscar
2 Velandia, head server."

3 A. Yes, correct.

4 Q. And do you see four lines down, it says Alvis Marangoni?

5 A. Yes.

6 Q. And he's just listed as a server, correct?

7 A. Yes. He also started only as waiter.

8 Q. Now, if you look at the top, the top right, do you see it
9 says, "Francisco Pistorio, GM," very small?

10 A. Yes, correct. I see it.

11 Q. And it says May 23, 2008?

12 A. Yes, correct.

13 Q. So, again, Alvis Marangoni was not a head server when
14 Mr. Pistorio was there, correct?

15 THE COURT: What is your question?

16 MR. DELANEY: Let me ask a different question, your
17 Honor.

18 Q. May 23, 2008 was approximately the time that Mr. Pistorio
19 left the restaurant, correct?

20 A. Approximately, yes.

21 Q. So we can agree, at least on this schedule Mr. Marangoni
22 was not a head server?

23 A. No. Not yet.

24 Q. And so Mr. Pistorio did not make him a head server?

25 A. No.

C44dcar5

Velandia - cross

1 Q. So he was made a head server later by Mr. Maggi, perhaps?

2 A. Perhaps.

3 Q. Now, yesterday --

4 THE COURT: How about the other people? Were they
5 made head servers after Mr. Pistorio at the restaurant?

6 THE WITNESS: Carlo promoted Stacy Crowe as head
7 server.

8 THE COURT: After Mr. Pistorio left the restaurant?

9 THE WITNESS: Yes, that's correct, your Honor.

10 THE COURT: Now, would more than one person be head
11 server on a shift?

12 THE WITNESS: No, your Honor. In one shift there was
13 only one head server. In the occasions where Michelle --
14 Alessandro Mancino, Michelle Tabossi, the only reason they
15 would act as head server, even if I was on the schedule, is if
16 I wasn't able to come to work. Then Mr. Pistorio obviously
17 would have to designate someone to close and act as such
18 because he would leave earlier.

19 BY MR. DELANEY:

20 Q. Now, you testified yesterday that you were able to void
21 customer orders, correct?

22 A. Yes, that's correct.

23 Q. And Mr. Pistorio could also void customer orders?

24 A. Yes, that too.

25 Q. Did you -- you started to be able to void orders when you

C44dcar5

Velandia - cross

1 became a head server, correct?

2 A. That's correct.

3 Q. That was in late 2005?

4 A. Yes, possibly.

5 Q. So you could void orders in 2006, as well?

6 A. Yes.

7 Q. 2007?

8 A. Yes.

9 Q. 2008?

10 A. Yes.

11 Q. And each time you voided an order, it would print a
12 receipt, correct?

13 A. Yes, that's correct.

14 Q. And we saw one of those receipts yesterday?

15 A. Yes, that's correct.

16 Q. And it had the words "MGR" on it?

17 A. Yes, that's correct.

18 Q. And every time you voided one of these receipts, would it
19 have the words "MGR" on it?

20 A. Yes, that's correct.

21 Q. And that is signified because the computer -- you had
22 manager level access to the computer, correct?

23 A. Yes, that's correct.

24 Q. And these receipts, other employees saw these receipts,
25 correct?

C44dcar5

Velandia - cross

1 A. Yes.

2 Q. The busboys would see these receipts?

3 A. Not the busboys but possibly the food runners as well as
4 the person who was working at the coffee station or also the
5 bartender.

6 THE COURT: Would they have "MGR" on them when they
7 saw them?

8 THE WITNESS: Yes, your Honor. They would bear "MGR."

9 THE COURT: Would they have any identification of you
10 on them?

11 THE WITNESS: Yes. It would bear my name and next to
12 it "MGR."

13 THE COURT: And your number?

14 THE WITNESS: No name and number, your Honor, but the
15 name and the word MGR.

16 THE COURT: On the receipt?

17 THE WITNESS: Yes, your Honor.

18 BY MR. DELANEY:

19 Q. I will ask you to turn to Plaintiffs' Exhibit 11.

20 MR. DELANEY: Your Honor, I am just going to help the
21 witness.

22 THE COURT: I see this is very important.

23 THE INTERPRETER: This is what? The plaintiffs'?

24 MR. DELANEY: Yes.

25 THE INTERPRETER: Oh, there are two binders.

C44dcar5

Velandia - cross

1 (Pause)

2 MR. DELANEY: I have other copies here, your Honor.

3 BY MR. DELANEY:

4 Q. So, Mr. Velandia, Mr. Parker discussed this with you
5 yesterday, but this is the kind of voided receipt you are
6 talking about, correct?

7 A. Yes, that's correct.

8 Q. Where on the receipt it says "Oscar V." and next to it it
9 says "MGR"?

10 A. Yes, that's correct.

11 Q. So, again, all the receipts when you void them, they looked
12 like this, correct, more or less?

13 A. Yes, correct.

14 MR. DELANEY: Your Honor, we move Plaintiffs' Exhibit
15 11 into evidence.

16 THE COURT: Plaintiffs' Exhibit 11 is admitted in
17 evidence.

18 (Plaintiff's Exhibit 11 received in evidence)

19 BY MR. DELANEY:

20 Q. Now, Mr. Velandia, you also led the shift meetings on
21 occasion, correct?

22 A. Yes, correct.

23 Q. These were the meetings that occurred at the beginning of
24 the lunch shift, for example?

25 A. Yes, correct.

C44dcar5

Velandia - cross

1 Q. Or also the meetings that occurred at the beginning of the
2 dinner shift?

3 A. Yes, correct.

4 Q. And when you led these meetings, you would speak to the
5 employees?

6 A. Yes.

7 Q. In your testimony yesterday, you said you only spoke of
8 menus, is that correct?

9 A. No -- yes, I would talk not only about menus but also about
10 the number of people or size of parties that we were having.
11 We were -- and how the night was expected to be so that we can
12 prepare for it.

13 Q. And so when you spoke of meetings, you would speak of how
14 the night was going to be and how to prepare for it, correct?

15 A. Yes, that is correct.

16 Q. And when you led these meetings, you stood at the front, in
17 front of all the employees?

18 A. Yes. I guess I would be around because the restaurant is
19 narrow and we would meet in a circle. Some would stand up and
20 others would sit down.

21 Q. But you would be standing.

22 THE INTERPRETER: I'm sorry?

23 Q. Mr. Velandia, you would be standing, correct, when you led
24 the meetings?

25 A. Yes.

C44dcar5

Velandia - cross

1 Q. And there were also meetings before private parties?

2 A. Yes, correct.

3 Q. And when you were headwaiter, you would also lead these
4 meetings before private parties?

5 A. Correct.

6 Q. And did you lead these meetings in 2006, the private-party
7 meetings?

8 A. No. In 2006, I didn't do the parties, or partially in
9 2006, Luigi Martini was the one in charge and after that
10 Michelle Tabossi was in charge of this.

11 Q. Just to be clear, in 2006 you never led one of the
12 private-party meetings?

13 A. It is possible that I may have done one of the parties when
14 there were multiple parties. I would help Mr. Michelle with
15 one of the parties.

16 Q. And in 2007 -- I'm sorry. Let me rephrase it.

17 In 2007, you led these private-party meetings?

18 A. Yes, if Michelle needed help with a party, yes.

19 Q. And in 2008 you became a party manager, correct?

20 A. Yes, that's correct.

21 Q. Prior to you becoming party manager, did you lead any of
22 the private-party meetings in 2008?

23 A. Yes. How I said before, that may have occurred but I'm not
24 sure.

25 Q. And on occasion Mr. Pistorio would also have larger staff

C44dcar5

Velandia - cross

1 meetings?

2 A. Yes. That's correct.

3 Q. When he would ask all the employees to be there?

4 A. Yes. If he wanted everyone to be there, he would make a
5 memo and he would post it on the board, and he would write in
6 it that it was mandatory.

7 Q. And you attended one of these meetings, correct?

8 A. Yes.

9 Q. Did you attend more than one?

10 A. Yes. I think so.

11 Q. And at the meetings you attended, Mr. Pistorio stood at the
12 front of the employees, correct?

13 A. Normally when these meetings took place, we would do it in
14 the Rialto and everybody would sit around in a circle and
15 Mr. Pistorio would be in the front.

16 Q. He would be standing?

17 A. Yes. He was standing.

18 Q. And at these meetings you translated for Mr. Pistorio,
19 correct?

20 A. Yes.

21 Q. And you would be standing beside him?

22 A. Not usually.

23 Q. Sorry. You would be standing beside him?

24 A. Sometimes I was next to him. Other times I would be facing
25 him but on the other side of the circle.

C44dcar5

Velandia - cross

1 Q. When you were translating for him, would you be standing
2 beside him?

3 A. Sometimes.

4 Q. Now, in front of all the employees?

5 A. Among the employees because, like I said before, it was a
6 circle so there was no front or back of the circle.

7 Q. Mr. Pistorio was standing at the front of the circle?

8 A. Yes, if you like to call it that way, but I don't
9 understand. If there is a circle and he's standing in the
10 middle of the circle, I don't know what you're calling the
11 front of the circle.

12 Q. I apologize. I didn't understand that he was standing in
13 the middle of the circle. I'll move on.

14 So you said yesterday you translated for Mr. Pistorio
15 on occasion with other workers, correct?

16 A. Yes, sir, that's correct.

17 Q. And you would translate, for example, when an employee
18 wanted to go home sick?

19 A. Well, I don't have the recollection that he had exactly
20 called me to do that, help him do that, but perhaps.

21 Q. We could agree that on occasion you translated for
22 Mr. Pistorio --

23 THE COURT: Objection sustained to the form of the
24 question.

25 Q. You did translate for Mr. Pistorio?

C44dcar5

Velandia - cross

1 A. If Mr. Pistorio would ask me for some type of help, yes.

2 Q. And Mr. Augustine Pena would also translate for
3 Mr. Pistorio?

4 A. Yes, I think so.

5 Q. And Mr. Pena spoke Spanish?

6 A. Yes, he spoke Spanish.

7 Q. And the chef, Giovanni Pinato, also spoke Spanish, correct?

8 A. Yes.

9 Q. And he would also translate for Mr. Pistorio?

10 A. Yes, he used to also translate.

11 Q. And Mr. Pena was an assistant manager at the restaurant,
12 correct?

13 A. Pena was in charge of the kitchen.

14 Q. He was the manager of the kitchen?

15 THE COURT: Do you know?

16 A. I don't know. He was -- like I said before, he was in
17 charge of the kitchen before, but nobody would refer to him as
18 the manager.

19 Q. Mr. Pinato, he was the executive chef?

20 A. That is correct.

21 THE COURT: Aren't we getting a little far afield?

22 BY MR. DELANEY:

23 Q. Now, you testified yesterday that Mr. Pistorio did all the
24 hiring, correct?

25 A. Yes, that's correct.

C44dcar5

Velandia - cross

1 Q. And that you never did any hiring of the new employees?

2 A. No, I never hired anyone.

3 Q. You did participate in some of these -- I'm sorry. Let me
4 rephrase.

5 When Mr. Pistorio hired new employees, he would hold
6 interviews, correct?

7 A. Yes, that's correct.

8 Q. So he would interview the new employees?

9 A. Yes, that's correct.

10 Q. And you participated in some of these interviews?

11 A. Only if he was going to interview or hire someone like a
12 busboy, or something like that, who didn't speak English, he
13 would ask me to keep his company.

14 Q. So it is your testimony that you were only there to
15 translate?

16 A. Most of the times, yes.

17 Q. So there were times you did more than translate?

18 A. No. Not more than translating because he would make the
19 question and they would answer.

20 Q. So your testimony is you were there only to translate?

21 A. Yes, only to translate or unless Mr. Pistorio would ask me
22 just to stay there with him. But if Mr. Pistorio asked me to
23 be there, stay there with him, that was very rarely an
24 occasion.

25 Q. Is it your understanding that he wanted you to be there

C44dcar5

Velandia - cross

1 because you were the most senior waiter?

2 A. Not necessarily, no. It's that Mr. Pistorio always wanted
3 to have -- it was something personal -- he wanted to have
4 somebody present at all times just to act as a witness.

5 Q. So he had you there to act as a witness?

6 THE COURT: These all go to Mr. Pistorio's state of
7 mind and I don't --

8 MR. DELANEY: OK.

9 Q. Now, did you ever participate in a meeting --

10 THE COURT: They are not admitted for that purpose, if
11 that's what you are trying to get them in for.

12 Q. Did you ever participate in a meeting where an employee was
13 fired?

14 A. Yes, on one opportunity.

15 Q. And that was the time when Mr. Pastor was fired?

16 A. Yes, Mr. Sergio Pastor.

17 Q. And that was the only meeting you were ever at when an
18 employee was fired?

19 THE COURT: Is that correct?

20 A. Yes, that's correct.

21 Q. Now, you were part of the tip pool, correct?

22 A. Yes, sir.

23 Q. And beginning in 2005, you were in charge of distributing
24 the cash tips to the workers?

25 A. I was in charge of that job ever since before -- well, I'm

C44dcar5

Velandia - cross

1 sorry, the old administration.

2 Q. Under the new administration, you were also in charge of
3 distributing tips?

4 A. Yes, as well.

5 Q. In 2005?

6 A. Yes.

7 Q. And until approximately 2009?

8 A. Yes -- no, actually approximately until 2010 or 2011.

9 Q. And you distributed them every week?

10 A. Yes, they are distributed every week but I was not the one
11 distributing them. I was the one doing the numbers in the
12 computer.

13 Q. The cash tips were kept in the safe?

14 A. Yes. Correct.

15 Q. And the safe was in the office?

16 A. Yes, that is correct.

17 Q. And you had the combination to the safe, correct?

18 A. Yes, that's correct.

19 Q. And Mr. Solis did not have the combination to the safe?

20 A. No, if I wasn't there, Mr. Pistorio would give him the
21 money, but that is only in the case of the employees who were
22 not there present on payday. Because on Mondays, when it is
23 payday, Mr. Delledonne always would hand directly the money to
24 Pablo Solis, so there was no need to take it out from the safe
25 box.

C44dcar5

Velandia - cross

1 Q. Cash tips were distributed every Thursday, correct?

2 A. Well, it has changed. It used to be every Thursday and
3 then Fridays, and now it's every Monday.

4 Q. OK. But in 2005, when the new owners took over, they were
5 distributed on Thursdays?

6 A. I think so.

7 Q. And also in 2006, on Thursdays?

8 A. Probably.

9 Q. And they were given out to the employees -- the cash was
10 given in white envelopes, correct?

11 A. Yes, that's correct.

12 Q. And you were one of the people in charge of handing the
13 envelopes to the employees?

14 A. No, it was Pablo Solis.

15 Q. So you never distributed the cash in the white envelopes to
16 employees?

17 A. Like I said before, if I had to hand over an envelope to
18 someone, it's because a person was off on the day of
19 distribution. And then perhaps the following day, when the
20 person would come in, if Pablo was not in, then I would give it
21 to them and they would sign a receipt.

22 Q. So on Thursdays, when the cash tips are distributed, you
23 would get the money from the safe?

24 A. No. The way -- like I said before, Mr. Delledonne would
25 bring the money from the bank and would give it directly to

C44dcar5

Velandia - cross

1 Pablo. And then Pablo would sit at a table and count, then
2 distribute it, and mark the envelopes, and immediately hand out
3 the money to all those who were there waiting.

4 Q. Now, yesterday you testified that -- let me rephrase.

5 So you ran the tip pool starting in 2005 under the new
6 owners -- under the new owners, you ran tip pool in
7 August 2005, correct?

8 THE INTERPRETER: Can you please read that back to me?

9 (Question read)

10 A. Yes, that's correct.

11 Q. And the workers voted you and Pablo to run the tip pool in
12 August 2005?

13 A. That is correct.

14 Q. And yesterday Mr. Parker showed you a document, D-32 --
15 D-32. I can show it to you again.

16 THE INTERPRETER: Do you want him to look for it?

17 THE COURT: Yes, he wants him to look for it.

18 I have to get someone to look for it for me.

19 MR. DELANEY: It is in a different binder. It is in
20 the binder on your left.

21 (Pause)

22 THE COURT: Defendants' D-32?

23 MR. DELANEY: Defendants', your Honor.

24 (Pause)

25 THE COURT: Yes.

C44dcar5

Velandia - cross

1 BY MR. DELANEY:

2 Q. Do you remember this document?

3 A. Yes, I do recall.

4 Q. And yesterday you said this document memorialized the
5 meeting in August 2005, when the workers voted you and Pablo
6 Solis to manage the tip pool?

7 A. No, Mr. Delaney. What happened is that that meeting took
8 place twice, first with Mr. Pistorio and then after with
9 Mr. Maggi, and this document is from where Mr. Maggi was
10 around.

11 Q. OK. I think yesterday you testified it was under
12 Mr. Pistorio. So just to be clear --

13 THE COURT: I'm sorry.

14 Q. Yesterday you testified that this was the meeting with
15 Mr. Pistorio. But I understand now that you made a mistake and
16 this is Mr. Maggi, under Mr. Maggi.

17 THE COURT: That isn't a question. You have to state
18 one, Mr. Delaney.

19 MR. DELANEY: Let me rephrase.

20 Q. Just to make the record clear, so this memo, D-32, is under
21 Mr. Maggi?

22 A. Yes, sir, that's correct. Yes, because there are people
23 here who came in after Mr. Maggi was in.

24 Q. Now, under the old owners there were assistant managers,
25 correct?

C44dcar5

Velandia - cross

1 A. Yes, that's correct.

2 Q. And under the new owners there were no assistant managers
3 in the dining room?

4 A. No, sir.

5 Q. Now, do you recall whether any Remi employee ever referred
6 to you as a manager?

7 A. No. They will always refer me as Oscar. They have always
8 called me Oscar.

9 Q. So they never referred to you with the title of manager?

10 A. No.

11 Q. So you don't recall any Remi employee ever referring to you
12 by the title of assistant manager?

13 A. No, not assistant manager.

14 Q. And you also don't recall any Remi employee referring to
15 you as the manager on duty?

16 A. Yes. Maybe on some occasions Mr. Pistorio did so but not
17 the employees.

18 Q. So Mr. Pistorio referred to you as the manager on duty?

19 A. He did that sometimes.

20 Q. Did he do it more than once?

21 A. I don't recall.

22 Q. Was it at least once?

23 A. Yes.

24 Q. Do you remember it being more than one time?

25 MR. PARKER: Asked and answered, Judge.

C44dcar5

Velandia - cross

1 THE COURT: I think if you look at the record, he
2 answered. So I would sustain the objection. He said
3 "sometimes," which is plural.

4 Q. Did Mr. Pistorio ever refer to you as an assistant manager?

5 A. No, never.

6 Q. In writing?

7 A. No, not that I recall.

8 Q. Did he ever -- did Mr. Pistorio ever refer to you as a
9 manager?

10 A. As manager? No, he never referred to me as manager.

11 THE COURT: You asked this very question before this.

12 MR. DELANEY: No, sir. I asked assistant manager.
13 That is a different title.

14 THE COURT: You asked manager, and he said sometimes.

15 MR. DELANEY: I asked the first question --

16 THE COURT: That is a different person than you are
17 asking now.

18 MR. DELANEY: I am asking three different titles, your
19 Honor.

20 THE COURT: Manager and assistant manager so far.

21 MR. DELANEY: Well, my first question was has
22 Mr. Pistorio ever referred to you as a manager on duty. I
23 believe that was the one when he answered "sometimes." Maybe
24 the transcription is off.

25 THE COURT: All right. If you think it is important,

C44dcar5

Velandia - cross

1 you can answer.

2 MR. DELANEY: I will ask my question again.

3 BY MR. DELANEY:

4 Q. Did Mr. Pistorio ever refer to you as a manager?

5 A. No, not that I recall, he did not refer to me as manager,
6 that I recall --

7 Q. Did he ever refer to you as manager in writing?

8 A. -- because I was not the manager.

9 THE COURT: The record is being made a mess. Start
10 over again and get your questions right.

11 I've got to get out of this case sometime this month.

12 MR. DELANEY: I'll start over.

13 Q. Did Mr. Pistorio ever refer to you as a manager either
14 orally or in writing?

15 MR. PARKER: Objection.

16 THE COURT: Objection sustained.

17 Q. Did Mr. Pistorio ever refer to you as a manager?

18 MR. PARKER: Objection.

19 MR. DELANEY: You said I could ask the question.

20 THE COURT: I am going to allow the question.

21 MR. PARKER: I'm sorry, your Honor.

22 A. No. No, he never referred to me as manager. I was not his
23 manager at the restaurant.

24 Q. And he never referred to you as a manager in writing?

25 A. Not that I recall.

C44dcar5

Velandia - cross

1 Q. Did he ever refer to you -- did Mr. Pistorio ever refer to
2 you as the manager on duty?

3 A. Yes, sometimes.

4 Q. And Mr. Pistorio made the work schedules, correct?

5 A. Yes, that's correct.

6 Q. And you never made a work schedule?

7 A. The work schedules, as long as Mr. Pistorio was there, he
8 always did them. Or when he would be -- would absent himself
9 to go visit his children, he would already leave the schedules
10 already made.

11 Q. So when Mr. Pistorio was general manager, you never made a
12 work schedule?

13 A. No.

14 Q. Can you turn to Plaintiffs' 110 again.

15 These are the work schedules?

16 A. Yes, sir.

17 Q. Can you turn to page 12 of 60.

18 A. Yes.

19 Q. Can you look at the top of the screen, where it says, "Made
20 by Oscar Velandia - Manager on Duty," do you see that?

21 A. Yes, that is correct.

22 Q. All I want to know is is it your testimony you did not make
23 this schedule?

24 A. Yes, that is my testimony.

25 Q. Now, yesterday you testified --

C44dcar5

Velandia - cross

1 THE COURT: I'm sorry. What was the answer?

2 THE WITNESS: Yes, it is my testimony.

3 THE COURT: What is your testimony?

4 THE WITNESS: Your Honor, that I did not make that
5 schedule.

6 THE COURT: Even though it says "Made by Oscar
7 Velandia"?

8 THE WITNESS: Yes, your Honor.

9 THE COURT: All right. That's all I want.

10 BY MR. DELANEY:

11 Q. Now, in addition to running the tip pool, you were also a
12 member of the tip pool, correct?

13 A. Correct.

14 Q. So you received tips from the tip pool?

15 A. Yes, as well.

16 Q. And you received tips when you were a server?

17 A. Always.

18 Q. And so also when you were a head server, just to be clear?

19 A. Yes, also.

20 Q. And if you hadn't been a manager, you could not have
21 received tips from the tip pool, correct?

22 THE COURT: I'm sorry. What's the question?

23 BY MR. DELANEY:

24 Q. If you hadn't been a manager -- I'm sorry. Let me rephrase
25 the question.

C44dcar5

Velandia - cross

1 Managers could not receive tips from the tip pool?

2 A. Restaurant managers? No.

3 Q. Mr. Pistorio was not part of the tip pool?

4 A. No, he was not part of it.

5 Q. And Mr. Brett Lockard was an assistant manager for a few
6 months under the new ownership, correct?

7 A. Correct.

8 Q. And when he was working under the new managers, he was not
9 a member of the tip pool either, was he?

10 A. No, he never took part in the tip pool.

11 Q. Now, you received a significant amount of tips every week
12 as a member of the tip pool?

13 A. Well, if I worked that week, the more one works during one
14 week is the more tips one gets. But that's generally true of
15 everyone.

16 Q. You could receive up to \$1,000 a week in tips?

17 MR. PARKER: Objection. Relevance.

18 THE COURT: Objection sustained.

19 MR. DELANEY: Your Honor, it goes to motive for why he
20 didn't want to be called a manager. There is a significant
21 financial incentive, because if he was a manager he couldn't
22 participate in the tip pool.

23 THE COURT: I understand.

24 Objection sustained.

25 BY MR. DELANEY:

C44dcar5

Velandia - cross

1 Q. Now, Mr. Velandia, I want to talk about the game that you
2 described earlier today, the game at Remi Restaurant.

3 Now, that game involved jokes, correct?

4 A. Verbally, yes.

5 Q. Was it jokes between workers?

6 A. Yes, that's correct.

7 Q. And to your knowledge, it also involved sexual comments by
8 one worker to another?

9 A. Yes. In fact, any kind of obscene language anyone --
10 people wanted to use.

11 Q. Those were explicitly sexual comments, correct?

12 THE COURT: I don't think you let him finish -- I
13 guess you did let him finish. All right.

14 A. Please repeat the question.

15 MR. DELANEY: Can you read it back, please.

16 (Question read)

17 A. Not all of them. Some of them.

18 Q. And it involved touching on the buttocks?

19 A. By the same token, not all comments were accompanied with
20 touching or vice versa. It depended on the situation. It
21 could be combined.

22 Q. But there was touching on the buttocks?

23 A. Yes.

24 Q. And there was touching on the penis over the clothes?

25 A. Correct.

C44dcar5

Velandia - cross

1 Q. And this morning you described simulated sex?

2 A. Yes, that's correct.

3 Q. And also on some occasions simulated oral sex?

4 A. Correct.

5 Q. Now, you viewed this touching, this kind of conduct as
6 normal at Remi, correct?

7 A. But at the beginning I didn't see it as normal under my
8 point of view because from the culture I come from, people
9 don't touch each other like that. But at the present time, I
10 could say that it was normal because everyone was doing it.

11 Q. So just to be clear, at Remi Restaurant, under the new
12 management, you viewed this as normal?

13 A. Yes, correct.

14 Q. And did you also view it as part of the daily routine at
15 Remi?

16 A. I wouldn't say part of the routine but part of the behavior
17 of the employees of Remi.

18 Q. My question was very specific. Did you view it as part of
19 the daily routine at Remi?

20 A. Mr. Delaney, to me a routine, it's everything in reference
21 to work. But if you want to include that in there as well,
22 then you may.

23 Q. Did it occur daily?

24 A. Yes.

25 Q. And did it occur in front of customers?

C44dcar5

Velandia - cross

1 A. I think that if it ever occurred in front of customers, it
2 would be very rare because I don't think anyone wants to be
3 seen by customers touching.

4 Q. Did you ever see it occur in front of customers?

5 A. Perhaps. But the truth is that I don't recall it, and I
6 don't want to say to you yes or no.

7 Q. But the game only happened in front of other employees,
8 correct?

9 A. Yes. Usually it was only with employees when we were
10 getting the room ready.

11 Q. If the touching had happened with only two employees
12 present, it would not have been part of the game, correct?

13 A. Yes. It depends. If the two employees got along well and
14 they were alone and they would do that, only they would know
15 whether they were joking or not.

16 Q. So if it was just two employees in private, it would not
17 have been part of the game that you described?

18 THE COURT: He doesn't say that. It is an improper
19 question. Look at the testimony. So you started with "so."
20 You can't do that.

21 Q. If the touching had only occurred in private between two
22 employees, that would not have been part of the game, correct?

23 A. Yes. It was also part of the game.

24 (Continued on next page)

C44kcar6

Velandia - cross

1 BY MR. DELANEY:

2 Q. Now, you recall being deposed in this matter?

3 A. Yes.

4 Q. And you recall that you were deposed under oath?

5 A. Yes.

6 Q. I'm going to ask you to open your deposition.

7 THE COURT: What exhibit? It's here someplace.

8 Page and line?

9 MR. DELANEY: Yes, sir. It's page 48, line 25.

10 Through 49 line 8.

11 MR. PARKER: Could I have that again, please?

12 MR. DELANEY: Page 48 line 25 through 49 line 8.

13 BY MR. DELANEY:

14 Q. Mr. Velandia, do you recognize this as the deposition that
15 was taken of you?

16 THE COURT: What? You're standing.

17 MR. PARKER: I'll let your Honor find the page. I am
18 going to object.

19 THE COURT: On what grounds?

20 MR. PARKER: On the ground that if this is for
21 purposes of impeaching his last testimony, this is not
22 impeachment.

23 THE COURT: All right, let me look through. 49 what?

24 MR. DELANEY: Line 8.

25 THE COURT: I will allow him to read the question.

C44kcar6

Velandia - cross

1 BY MR. DELANEY:

2 Q. Mr. Velandia, do you recognize this as your deposition?

3 A. Yes.

4 MR. DELANEY: I'm going to read.

5 "Q. So, then it is fair to say that any contact you had with
6 Mr. Sotarriba would not have been in public, as we have said?

7 "A. No. It was always in public. There was always people
8 around. Like I said before, it was like to make fun of
9 somebody. If we were alone, then that was not making fun.
10 That was something else."

11 Q. Was that your testimony at your deposition?

12 A. Yes, but I was only answering to Mr. Sotarriba's behavior.

13 Q. My only question is: Was that your testimony at your
14 deposition?

15 A. Yes.

16 Q. Now, I want to talk about the employees that were part of
17 the game that you witnessed.

18 So you were part of the game, correct?

19 A. Yes.

20 Q. And you touched other employees on the penis?

21 A. Yes.

22 Q. Over the clothes?

23 A. Yes, correct.

24 Q. And you touched the plaintiff's over the clothes on the
25 penis in this action?

C44kcar6

Velandia - cross

1 A. Yes.

2 Q. You touched Mr. Moises Pastor on the penis over the
3 clothes?

4 A. That's correct.

5 Q. And Mr. Sergio Pastor?

6 A. Yes.

7 Q. Which other employees did you touch on the penis over the
8 clothes, under the new ownership?

9 A. Well, all of those who get along with us.

10 Q. I'm asking you for specific names, Mr. Velandia. Which
11 other people do you remember touching on the penis over the
12 clothes under the new ownership?

13 A. Besides Mr. Sotarriba, Caravantes? Mr. Moises Pastor,
14 Mr. Sergio Pastor, and perhaps I played like that once with
15 Pablo, Jose Ortiz, Jose Figueroa, and sometime with Luis. I
16 don't recall his last name, but he used to work downstairs in
17 the kitchen, in the line. I also recall I used to get along
18 that way with Ivan Reyes. Well, perhaps there were other
19 guys -- perhaps there were other guys that we used to get along
20 like that, that were working there, but I don't recall their
21 names.

22 Q. So that's all the names you recall right now?

23 THE COURT: Is Ivan Pena a man or a woman?

24 THE WITNESS: Ivan what, your Honor?

25 THE COURT: Reyes. Is she a man or a woman?

C44kcar6

Velandia - cross

1 THE WITNESS: No, your Honor, Ivan Reyes is a man.

2 BY MR. DELANEY:

3 Q. What's the last time you've touched a Remi employee over
4 the clothes on their penis?

5 MR. PARKER: Objection.

6 THE COURT: It's outside the scope of this case.

7 Q. When is the last time you touched Mr. Caravantes over the
8 clothes on his penis?

9 A. I don't recall.

10 Q. What's the last time you touched Mr. Sotarriba on his penis
11 over his clothes?

12 A. That either I don't recall.

13 Q. Was it in 2007?

14 A. I couldn't be precise, but when we stopped, we stopped.

15 Q. You don't remember the year at all?

16 A. No, Mr. Delaney, I don't recall exactly.

17 Q. I'm not asking for an exact date. I'm asking for a general
18 recollection. Do you generally recall when the last year is
19 that you touched Mr. Sotarriba?

20 A. Perhaps that could have been in 2006, if you want me to
21 give you a year.

22 Q. Now, all those names you just listed, who you touched, were
23 those all part of your group, what you would call your group?

24 A. Correct, yes.

25 Q. But you never discussed the game with the members of your

C44kcar6

Velandia - cross

1 group, did you?

2 A. No, Mr. Delaney, because this is not a game of strategies;
3 it's just simply demeanor or behavior.

4 Q. You never specifically asked for permission to touch
5 Mr. Caravantes, did you, on the penis over his clothes?

6 A. No, because by the same token, he never asked me whether he
7 could touch me; everything occurred for just playing.

8 Q. And you never specifically asked Mr. Sotarriba for
9 permission to touch him on his penis over his clothes?

10 A. No, I didn't ask either, because he didn't ask me for
11 permission either, to be daring in such a way with me.

12 Q. Now, Mr. Velandia, is it your belief that consent -- a
13 consensual sexual relationship is something that doesn't have
14 to be spoken?

15 MR. PARKER: Objection.

16 THE COURT: Objection sustained to the form of the
17 question.

18 Q. Do you believe you can get consent to touch someone
19 sexually without getting a verbal agreement from them?

20 MR. PARKER: Objection.

21 THE COURT: Objection sustained to the form of the
22 question.

23 Q. Do you believe that consent --

24 MR. DELANEY: I'll move on.

25 Q. Now, do you recall when you touched Mr. Sotarriba -- sorry,

C44kcar6

Velandia - cross

1 strike that.

2 Do you recall any instance when you touched
3 Mr. Sotarriba where you were wearing the jacket that you
4 described?

5 THE INTERPRETER: Please read that back to me.

6 Q. When you became headwaiter, you wore a suit jacket,
7 correct?

8 A. Correct.

9 Q. And do you recall any incident when you touched
10 Mr. Sotarriba when you were wearing that jacket?

11 A. Well, a specific instance? I don't recall any because with
12 Mr. Sotarriba it was just playing quickly like that. But I
13 think that it could have well happened because we used to get
14 along that well.

15 Q. So you believe it's possible that you touched him when you
16 were wearing the jacket?

17 A. Yes, of course.

18 Q. You recall touching Mr. Sotarriba in the middle server
19 station -- sorry.

20 Do you recall touching Mr. Sotarriba in one of the
21 server stations?

22 A. I, again, in the same manner, I don't recall any specific
23 instance, but it could have well happened while we were
24 preparing for the meal, for dinner.

25 Q. You used the computers in the server stations, correct?

C44kcar6

Velandia - cross

1 A. Yes, that's correct.

2 Q. Do you remember ever touching Mr. Sotarriba in the coffee
3 station?

4 A. I don't recall any specific instance, but the situation
5 could have arisen while we were getting prepared for a meal,
6 for dinner.

7 Q. Do you remember any incident when you touched Mr. Sotarriba
8 in the coffee station?

9 A. At the coffee station? Specifically, no, but like I said,
10 we would play, and it's a situation that could happen at any
11 moment, at anywhere in the restaurant, because nobody knew when
12 it was going to take place.

13 Q. I'm just trying to understand your testimony. So it was
14 possible that you could have touched Mr. Sotarriba in the
15 coffee station?

16 MR. PARKER: Objection.

17 THE COURT: Objection sustained to the question.

18 Anything is possible.

19 Q. Do you think it's likely that you touched him in the coffee
20 station?

21 A. It is possible that it could be possible.

22 Q. Is it likely?

23 A. Maybe yes, maybe no, maybe it happened there, maybe not.

24 Q. Now, you testified you saw Mr. Sotarriba touch other
25 people, correct?

C44kcar6

Velandia - cross

1 A. Yes, correct.

2 Q. Who specifically did you see him touch?

3 A. I recall he used to play a lot like that with Osvaldo and
4 also with Jorge Cortez. He also used to play like that with
5 Jose Ortiz, with Mr. Caravantes, also with Sergio Pastor.

6 Q. Do you recall whether he ever touched Osvaldo in the coffee
7 station?

8 A. No, I didn't say that he had touched him at the coffee
9 station.

10 Q. So you did not see him touch him in the coffee station?

11 THE COURT: Touch who?

12 MR. DELANEY: Osvaldo Serrato.

13 THE WITNESS: Mr. Osvaldo Serrato touching
14 Mr. Francisco?

15 Q. I'll go back to my original question. I'd asked you for
16 examples of who Mr. Sotarriba had touched, and one of the names
17 you gave me was Osvaldo Serrato.

18 A. Correct.

19 Q. So I'm asking, did you ever see Mr. Sotarriba touch
20 Mr. Serrato in the coffee station?

21 A. I used to see them play like that, but I don't recall
22 specifically if I saw him touching him at the coffee station.
23 It could have also happened at the dining room or also at the
24 locker room.

25 Q. Do you remember any specific location you saw Mr. Sotarriba

C44kcar6

Velandia - cross

1 touch Mr. Serrato?

2 A. No. These are occurrences that took place so many years
3 ago, so I don't recall the specific place.

4 Q. Do you remember where Mr. Sotarriba touched Mr. Serrato,
5 where on the body?

6 A. They would usually touch each other in the buttocks, or
7 would pretend to make believe that they were having a sexual
8 act.

9 Q. Are you speculating, Mr. Velandia, or are you recalling a
10 specific instance when you saw Mr. Sotarriba touch Mr. Serrato?

11 MR. PARKER: Your Honor, I'm not sure he even
12 completed his answer, first of all; and secondly, I object to
13 the form of the question.

14 THE COURT: I'll sustain the objection to the form of
15 the question. Ask another question.

16 BY MR. DELANEY:

17 Q. Do you remember a specific instance when Mr. Sotarriba
18 touched Mr. Serrato on the butt, on the buttocks?

19 THE INTERPRETER: What was the name of the other
20 gentleman Sotarriba touched?

21 MR. DELANEY: Mr. Serrato.

22 THE WITNESS: To be specific, I don't recall any
23 specific instances. I know, yeah, the way they played, but I
24 don't recall a date or place exactly.

25 Q. Do you recall a specific instance where Mr. Sotarriba

C44kcar6

Velandia - cross

1 simulated sex with Mr. Serrato?

2 A. No, I don't recall.

3 Q. You don't recall a date?

4 A. No.

5 Q. You don't recall the location?

6 A. At the restaurant, but I wouldn't dare say the specific
7 place because I don't recall.

8 Q. You also said Mr. Sotarriba touched Mr. Jorge Cortez?

9 A. Yes, that's correct.

10 Q. Do you remember any specific incidents when Mr. Sotarriba
11 touched Mr. Cortez?

12 A. No, I don't recall anything specifically.

13 Q. Do you recall any specific incident when Mr. Sotarriba
14 touched another employee at Remi?

15 A. No.

16 Q. Now, you said Mr. Sotarriba called you Flower correct?

17 A. Yes, not only to me but he used to call others Flower as
18 well.

19 Q. Do you remember any specific incident when he called you
20 Flower?

21 A. No, Mr. Delaney, he was just saying jokingly at any time,
22 hello, Flower.

23 Q. Do you remember any -- did Mr. Sotarriba call you a puta?

24 A. Yes, I recall him calling me that way.

25 Q. Do you remember any specific incident when he called you

C44kcar6

Velandia - cross

1 puta?

2 A. No, Mr. Delaney, I don't recall.

3 MR. DELANEY: Your Honor, are we breaking at 4:00?

4 That will affect where I start.

5 (Discussion off the record)

6 THE COURT: I'm waiting for a defendant, so go right
7 ahead.

8 MR. DELANEY: OK.

9 BY MR. DELANEY:

10 Q. Now, you said Mr. Caravantes was also part of the game that
11 you described, correct?

12 A. Yes, that's correct.

13 Q. And he touched you as part of the game?

14 A. Yes, as well.

15 Q. And you touched him as part of the game?

16 A. Yes.

17 Q. Now, he didn't touch you as part of the game under the new
18 ownership, correct?

19 A. Yes, he used to touch me.

20 Q. Let me rephrase. Did he touch you as part of the game
21 under the old ownership?

22 A. Yes, correct.

23 Q. Did he touch you on the penis, under the old ownership?

24 A. No, he never touched my penis.

25 Q. Did he touch you on the buttocks, under the old ownership?

C44kcar6

Velandia - cross

1 A. Yes.

2 THE COURT: Did he touch you on the clothes over the
3 penis, in the old ownership?

4 THE WITNESS: Yes, your Honor.

5 THE COURT: Over the clothes?

6 THE WITNESS: Correct, over the clothes.

7 THE COURT: Under the old ownership?

8 THE WITNESS: Yes, your Honor, that's correct.

9 BY MR. DELANEY:

10 Q. At some point -- and I'll come to this in a second -- at
11 some point you and Mr. Caravantes, your testimony is, that you
12 and Mr. Caravantes had a different kind of relationship,
13 correct?

14 A. Yes, that's correct.

15 Q. And your testimony is that that relationship was not part
16 of the game?

17 A. Well, no, once he made a different type of advancement,
18 then it was no longer a joke.

19 Q. Well, I'm trying to draw a distinction between that
20 relationship and the game.

21 So, under the new ownership, did Mr. Caravantes touch
22 you on the buttocks as part of the game?

23 A. Well, I would say that changeover, from playing around to
24 something more serious, occurred during the transition from the
25 old management to the new company. So, perhaps during the new

C44kcar6

Velandia - cross

1 company he touched me as well as a game but also as something
2 different.

3 Q. Do you have a specific recollection of Mr. Caravantes
4 touching you as part of the game, under the new ownership but
5 before you claim he initiated a different kind of relationship?

6 A. No, because it was just part of a game, and I don't have
7 any recollection of any specific moment. That could have
8 happened at any day, any moment.

9 Q. Mr. Caravantes was not part of your group, though, was he?

10 A. He used to get along with me, and he used to get along with
11 others, but not necessarily -- and that doesn't mean that if I
12 saw some other person touching a third person, that I would go
13 touch the first person, because perhaps I didn't get along as
14 well with that other person.

15 Q. You had a specific group that you played the game with,
16 though, correct?

17 A. Well, that I recall, yes.

18 Q. And at the time, when the new ownership took over,
19 Mr. Caravantes was not part of that group, was he?

20 A. Well, Caravantes used to get along with me like that, well,
21 but I can't think of it as part of a team or group.

22 Q. So he was not part of your group?

23 THE COURT: Were there other groups?

24 THE WITNESS: Your Honor, this is a situation that
25 happens --

C44kcar6

Velandia - cross

1 THE COURT: I'm asking you whether there are other
2 groups that got along together.

3 THE WITNESS: I would say that, yes, there were other
4 people that didn't get along with me as well, so, yes --

5 THE COURT: I'm not talking about you. I'm asking
6 about in the restaurant. Were there several groups of people
7 who got along well together?

8 THE WITNESS: Yes, your Honor.

9 THE COURT: Did they all --

10 THE WITNESS: You could say that.

11 THE COURT: -- engage in the game, more than one group
12 engage in the game?

13 THE WITNESS: Yes, your Honor.

14 THE COURT: How big would these groups be, four, five
15 people, what, five or six people?

16 THE WITNESS: Yes, your Honor. If you allow me, I'll
17 explain something to you?

18 THE COURT: Yes.

19 THE WITNESS: It was not per se a group of five
20 people. It was like a way that people will relate to each
21 other, but it was not limited only to a group of people. And
22 like I say, some people have their friends and some of those
23 friends have friends in common. In that case, there are
24 friends in common, but other times there are not.

25 THE COURT: Are there more than one of those groups

C44kcar6

Velandia - cross

1 who engaged in the game?

2 THE WITNESS: Yes, your Honor.

3 THE COURT: You observed that?

4 THE WITNESS: Yes, your Honor. Maybe I can also
5 clarify that they would -- a lot of them would play but not all
6 of them would play, would touch one another.

7 BY MR. DELANEY:

8 Q. So Mr. Caravantes was not part of your group, though,
9 correct?

10 THE COURT: I think he's answered that question. It's
11 been asked, I think, and answered as well as you can under the
12 circumstances.

13 BY MR. DELANEY:

14 Q. I want you to turn to your deposition transcript,
15 Mr. Velandia.

16 A. OK.

17 Q. Page 59 line 17.

18 THE COURT: 59?

19 MR. DELANEY: Line 17.

20 Q. Through 59 line 22.

21 THE COURT: All right.

22 MR. DELANEY: I'm going to read this passage to you,
23 Mr. Velandia.

24 "Q. And would you consider Mr. Caravantes a member of the
25 group that you described?

C44kcar6

Velandia - cross

1 "A. Not the same group, because he would -- he would get along
2 with his group, his crowd, his people, not with the same
3 group."

4 Q. Was that your testimony at your deposition?

5 A. Yes, that's correct.

6 THE COURT: Is that testimony true?

7 THE WITNESS: Yes, your Honor.

8 Q. Now, you claim Mr. Caravantes initiated a sexual
9 relationship with you in 2005, correct?

10 A. That's correct.

11 Q. Prior to that, you two had only engaged in what you call
12 the game, correct?

13 A. Yes, correct.

14 Q. And as you stated at your deposition, he was not part of
15 your group, was he?

16 A. Well, he would get along with me like that.

17 Q. He was not part of your group, was he, Mr. Velandia?

18 A. Mr. Delaney, we can't talk about a group as if it was -- as
19 if they had like several different groups. When I spoke about
20 a group, I just meant to talk about the people with whom I get
21 in that manner.

22 Q. He was not part of that group that you got along with in
23 that manner, was he?

24 A. In that case, yes, because he used to touch me, so he was
25 part of it.

C44kcar6

Velandia - cross

1 Q. So it's your testimony that Mr. Caravantes, up until this
2 point, had only participated in the game with you, correct?

3 A. With me and other people that he used to get along like
4 that.

5 Q. And you knew at this time that Mr. Caravantes was married,
6 correct?

7 A. Yes, correct.

8 Q. Did you know that he had children?

9 A. Yes.

10 Q. And he had never told you that he was gay, had he?

11 A. No.

12 Q. Or that he was bisexual?

13 A. No.

14 Q. So just to be clear, your testimony is that he approached
15 you from behind, correct?

16 A. Correct.

17 Q. While you were standing at the door of the Rialto Room?

18 A. Correct.

19 Q. When the Rialto Room was full of a private party?

20 A. Yes, correct.

21 Q. And he pressed an erection into you?

22 A. Yes.

23 Q. This was the first time he had ever done anything like that
24 to you?

25 A. That was the first time he ever did that.

C44kcar6

Velandia - cross

1 Q. And he had never said to you that he was interested in this
2 type of relationship that you described?

3 A. No, we never spoke about that.

4 Q. And you had never said to him that you were interested in
5 that kind of relationship?

6 A. No, I didn't do that either, because I never saw
7 Mr. Caravantes as a bisexual or homosexual person, so I never
8 expressed that to him.

9 Q. You said you knew that he was pushing an erection into your
10 buttocks, correct?

11 A. Yes, that's correct. I was able to feel it.

12 Q. And you said you reached behind and you felt his
13 erection -- reached behind yourself, sorry, and felt the
14 erection?

15 A. Yes, correct.

16 Q. Now, did you touch the skin of his penis?

17 A. No.

18 Q. I'm going to ask you to go to your deposition again, page
19 61. Page 61 line 23 through 62 line 4. I'm going to read this
20 to you, Mr. Velandia.

21 "Q. But -- well, first, do you recall seeing his erection? He
22 was behind you, right?

23 "A. No. I -- I did touch it, I put my hand behind me and I
24 touched it, I could feel that he was erect and I could feel the
25 skin."

C44kcar6

Velandia - cross

1 Q. Was that your testimony at the deposition?

2 A. Yes, Mr. Delaney, that was my testimony.

3 Q. Does that refresh your recollection that you touched the
4 skin of his penis when you reached behind you?

5 A. Yes, I would say yes, but it's -- I can't recall all the
6 details. It's been seven years since then, and I can't recall
7 all the details one by one.

8 Q. So you're changing your testimony? You're now saying that
9 you did feel his erect penis outside of his clothes?

10 A. Well, it's not that I'm changing it. If I did put my hand
11 and I felt it, but if I said that the day of the deposition,
12 that's the details that I remember at the time.

13 THE COURT: Listening to that testimony that you gave
14 at your deposition, does that refresh your recollection that
15 you did feel the skin of his penis?

16 THE WITNESS: Yes, exactly, your Honor.

17 THE COURT: That refreshes your recollection that you
18 did? Not because you read it, because you now remember?

19 THE WITNESS: Oh, no, all because I'm reading it here
20 now.

21 THE COURT: Does it refresh your recollection
22 without -- not paying any attention to what it says in writing,
23 but your thinking back about the event, does it refresh your
24 recollection that you did feel the skin on his penis?

25 THE WITNESS: No, honestly, your Honor, no, it does

C44kcar6

Velandia - cross

1 not.

2 THE COURT: All right, we'll have to break for the
3 day. 9:30 tomorrow morning.

4 MR. DELANEY: Your Honor, can we instruct the witness?

5 THE COURT: Oh, yes.

6 You're under cross-examination. You're not to discuss
7 the case with your counsel or with anyone else until tomorrow
8 at 9:30, when Mr. Delaney resumes.

9 THE WITNESS: (In English) thank you.

10 (Adjourned to April 5, 2012 at 9:30 a.m.)

11 * * *

INDEX OF EXAMINATION

Examination of:	Page
-----------------	------

OSCAR VELANDIA	
----------------	--

Direct By Mr. Parker	802
--------------------------------	-----

Cross By Mr. Delaney	876
--------------------------------	-----

PLAINTIFF EXHIBITS

Exhibit No.	Received
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11	887
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DEFENDANT EXHIBITS

Exhibit No.	Received
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60 and 61	811
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